



# Comparative Study on Constitutional Processes in the Arab World

## A Gender Perspective



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Writers

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### **Comparative Study on Constitutional Processes in the Arab World: A Gender Perspective**

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## FOREWORD

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The start of the year 2011 was exceptional in the Arab region: revolutions in Tunisia and Egypt broke out. With limited extent of violence and destruction both revolutions toppled the respective Presidents, Zin el-Abidine Ben Ali and Hosni Mubarak, in a matter of weeks. This encouraged revolutionary movements elsewhere in the Arab region to erupt, either directly in some places, with popular protests in the streets, or indirectly, with some Arab governments initiating pre-emptive constitutional modifications to avoid the spread of revolutionary winds on their soil. Other regimes just ignored the events despite tangible evidence that no regime, whatever its nature, would be immune and protected from popular rage.

The events in the region, alias the “Arab Spring”, were not arbitrary. They did not emerge from a vacuum. It would be oversimplified to relate them to the oft-cited descriptions of being plots, made by external actors. It would also fail to capture the complexity of the “Arab Spring” by merely describing the events as “imports” of what occurred in other countries. It would be absurd to think that at such historic moments, populations take to the streets, in such numbers, diversity, enthusiasm, and passion without any pressing reasons or causal factors. Discarding these events and their impact would also ignore the deeply rooted and cumulative reasons which led the region to the current situation. Some of these causes were related to laws that repressed freedoms and justified totalitarianism, instead of preventing it. Other causes were of an economic nature with policies that impoverished people. There were also causes related to security, with practices that intimidated people and thus leading to these outcomes.

Amidst all these causes, constitutions play an important role. They were the subject of many demands chanted by Arab populations, women and men alike. Although the term ‘constitution’ was not used in the popular chants, it was nevertheless, the demand. A simple analysis of the slogans raised by the rebel populations in the streets of Sidi Bouzid in Tunisia, in Cairo’s Freedom square, in the Omary Mosque in Daraa, Syria, the Wahran alleys in Algeria, the Jamal Abdel Nasser Square in Amman, Jordan, the small neighbourhoods of Moroccan Casablanca and in many other cities and squares, leads us first and foremost to the constitution.

When populations raise slogans to demand freedom, dignity, equality, social justice, an end to totalitarianism and dictatorship, they are without doubt related to the constitution. If existing constitutions had provided for rights theoretically, and guaranteed their implementation practically, there would have been no need for revolution and the region would have been spared all the destruction it has suffered.

The study presents and analyses the socio-political context of the constitution drafting processes. The starting point here is not the moment when the constitution was drafted, and when the moment the drafting committee was formed. Rather, it begins long before and looks at the context which led people to revolt, and later, prompting the drafting of new constitutions or the amendment of existing ones.

The study provides an analysis of the social, political and economic realities of the countries under inquiry. It also looks at the security and the legal environment in which the work of civil society has operated. The analysis includes the extent to which the civil society had social and legal freedom to raise, adopt, and defend the rights of women. This feminist, gender-sensitive perspective emphasises the role of women in all of these events as active agents, partners, and persons of influence.

Perhaps the most important question here has been to examine whether lessons have been learnt from the previously flawed experiences of establishing constitution drafting committees, including the actual process of drafting and adoption. Have these committees in their work, taken into account the criteria of transparency and participation during the drafting, discussion and the adoption of the constitutional texts? Have they pursued a gender-sensitive agenda as well as including women and advocates of women's rights, or does the situation of Arab States remain unchanged after the "Arab Spring"?

Arab women have been partners in the early stages of the revolution, partners in prisons and detention centres, and throughout the years, partners suffering from oppression and corruption. They have remained partners at the moment when the fruits of the revolutions were to be reaped in light of people's struggles and suffering of past decades. However, have they remained partners when the constitutions were created? Were they represented in the constitution drafting committees? Were their demands of rights and equality put on the agenda at the drafting table, and were they reflected in the final outcome? Following their patience and struggle, have women really been able to reap their fruits?

# INTRODUCTION

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Since the popular uprisings that began in 2011, Arab-speaking societies have undergone significant changes. Popular protests broke out in the streets, demanding freedom, human dignity, democracy and social justice. It was a historic opportunity where the break from the regime was not only limited to the toppling of the regimes. It was also an overthrow of the system of laws and institutional structures on which these regimes had been based upon. The significance of this period requires a new model of assessment, with new reference points and values.

The reconstruction of a model should not only be restricted to the political domain. Rather, it should be extended to the social sphere because together, the two dimensions are critical in determining the role of religion in State affairs as well as its relation to political authority. The role of religion is prevalent in the region, and the link between religion and political authority has implications on the system of governance. It has also implications on the relationships among individuals, especially with regards to principles of equality in rights and duties before, and in the law, as well as the prohibition of discrimination. Principles such as these are crucial to the power relations between women and men.

In circumstances such as these, we need to realise that all scenarios are possible. They are neither limited, nor are they necessarily linked to choices of freedom, progressiveness or modernity. The transitional period witnessed in many Arab countries, accompanied with liberalisation of opinion and expression, have enabled several political and ideological trends. Some of these trends might lead to the establishment of new types of totalitarian regimes and State actors.

The transitional periods therefore represent a delicate period as they also carry instabilities. One form of such instability emanates from the presence of several protest movements that differ in their compositions, discourse, values, and means of protest. Their presence may contribute to violence with varying degrees of intensity. Another form of instability arises from the vulnerability of the ruling institutions, as well as the vulnerability of the State itself caused by protests, the collapse of old institutions, and the absence of alternatives based on new legality and legitimacy. The erratic environment found in the immediate aftermath of revolutions has been characterised as a transitional period where the emergence of several different actors creates states of instability. Such instabilities make it difficult to choose the new components of governance to face challenges in a logical and resolute way.

The events that shook the region have been termed by the West as the “Arab Spring”. This narrow term fails to reflect the complex situation the region is undergoing. The term in addition, reflects a view of a situation that is not necessarily shared by all actors involved in the process. Nor does the designation acknowledge those that have been affected by the events. This study therefore, chooses to place the term “Arab Spring” between inverted commas whenever it is used, in order to make sure that it does not adopt the description commonly associated with it. However, the term will not be dismissed in its entirety. This is primarily because of its common usage in Western mass media and academia.

## Why constitutions?

The drafting of constitutions is a crucial stage in constitution-building processes. These processes warrant for considerable attention, because it is the constitutions that determine the political structure, create decision-making mechanisms, and distribute power. Gender is here also considered as a criterion that may serve as a yardstick in order to measure the extent to which the constitution may depart from democratic principles.<sup>1</sup>

Social structure determines the paradigm of political authority because it constitutes the system of governance and leadership. The constitution as the highest law and as a reference point, may have an impact on the social system as well as on its restructuring. The constitution may be therefore used as a tool for the modernisation of the State.

The importance of the constitution as a special modernising tool stems from the fact that it is not only a tool for controlling political power. It may also shape social structures, namely, the relationship between women and men, the overall family structure, and the type of relationship between women and men in the family structure. In this regard, a constitution can reflect a family system that is discriminatory towards women by reinforcing their absence, or excluding them from the social sphere both in terms of their presence and action. However, a constitution may also have the capacity to break free from this universal subordination of women by establishing a new approach to human relations, one that is based on gender equality. This is critical because the public sphere which incorporates the political, is an extended version of the family structure. Thus, the values and principles governing the family structure have an impact on the nature of ideologies that are found in the ruling system of a State.

## Research objectives and methodology

This study aims to understand and analyse the processes of drafting constitutions from a gender-sensitive perspective. The reason for choosing this perspective is two-fold. First, it is impossible to speak of any democratisation process without taking into account the gender power dimension. This also involves the consideration that women should be entitled with equal rights, without any kind of discrimination. Second, the work required on constitutional texts - be it the editing of existing ones, or elaborating new - provides historic opportunities that can correct the path related to the position of women in society. This may be the position of women within the family or in the public sphere.<sup>2</sup> They are opportunities in which a society can move away from a patriarchal system, and the customs and traditions that have strangled the rights of women.

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<sup>1</sup> See: S., Suteu & I., Draji, eds. B. Jonsson & M. Alrahabi. *ABC for a Gender Sensitive Constitution*, Paris, 2016, *Euromed Feminist Initiative IFE-EFI website: [www.efi-ife.org](http://www.efi-ife.org)*

<sup>2</sup> *Ibid.*

For the purpose of this study, nine countries from the Arab-speaking region are considered: Algeria, Egypt, Iraq, Jordan, Lebanon, Libya, Morocco, Syria and Tunisia. A couple of reasons underlie the choice of these countries. First, the study aims to be as representative as possible of the various countries in the Middle East and North Africa region (MENA). Second, and the most important reason, is linked to the aim to illustrate that the “Arab Spring” covers different realities and varying situations throughout the region, be it because of the underlying reasons that triggered the protest movements, the type of events that unfolded, or their end-results.

The multiple and diverse factors behind the political and institutional transformations witnessed by these countries differ in level of intensity. The transformations have evolved, each in a different way. Some countries saw protests that toppled the existing regimes and were thus able to enact new constitutions, as is the case of Tunisia and Egypt. Popular protest movements in other countries developed into violent local, regional and international conflicts that are still on-going, such as Syria and Libya. Other countries have sought to pre-empt the protest movements by initiating constitutional amendments early on, in order to contain popular anger, such as in Jordan, Algeria and Morocco. One should also not forget the Lebanese constitutional example that remained at the side-line of the “Arab Spring”. In fact, Lebanon was not at all affected by the events. Iraq represents a special case, because its constitutional experience resulted from wars and occupation in the country. Its experience points towards a constitution that was prepared by a foreign hand. The constitution continues to be problematic on the level of politics and gender with issues that still need to be tackled.

As far as the engendering process is concerned, the objective of the study is not only limited to analysing the content of the constitutions of the countries under study. Rather, the study also endeavours to highlight information and the challenges following the constitution-building process itself. That is, those processes that have had a tangible effect on the final product: the text of the constitutions. It is hoped that this study will contribute with recommendations, and will be able to draw lessons that can be used in the future.

At the methodological level, the study explored existing literature on the selected countries, covering the contemporary history of each country and the nature of their political regime. The study also draws on references, research and newspaper articles that have covered the revolutionary movements and reforms. Furthermore, the study builds on the most important legal texts resulting from the transitional processes. It also sheds light on the democratisation processes through the eyes of the different actors. Fifty-six in-depth interviews and two focus-group discussions have been conducted with activists, representatives of civil society organisations, women’s organisations, members of political parties, observers, and active participants in the political sphere. Some of the interviewees have requested to remain anonymous and thus the option to add a list of respondents in an annex of the study has been waived.

Beyond the narration and analysis of events, the interviews convey how the different actors have understood the successes and failures of the processes under study. Meetings with different actors and witnesses were important because the opinion of civil society activists regarding the events may

differ from the perceptions of those involved in the political parties. Regardless of whether they were in support of gender equality or not, the political considerations might have prevented them from adopting modernist attitudes in predominantly conservative societies. If such attitudes were acted upon, they would have turned a significant part of the voters against them. This is in contrast to civil society activists who tend to take a clear position on such issues and who organise pressure groups on political parties. It was therefore useful to collect testimonials from both sides and to have a dialogue with researchers and academics because the nature of their profession allows them to keep an epistemological distance, one that is necessary for analysing the events as objectively as possible.

## International standards on gender-sensitive constitutions

At the moment, certain international criteria have emerged as reference for gender-sensitive constitution drafting. They are drawn from the experiences of countries from the Global North and the Global South.<sup>3</sup> First, these criteria consecrate the close link between democracy and gender equality in rights, duties, and principles of non-discrimination towards women. Second, they suggest formal measures such as engendering the constitutional language, and the procedures that guarantee and protect women's rights in order to address discrimination and exclusion. Moreover, they point at the contents that are to be consecrated in order to achieve such a gender sensitive constitution. Based on international references in analysis and assessment, we take into consideration two things: first, the constitutional and legal legacy of the different countries. Constitutions are not written in a vacuum. Understanding constitutions and measuring the extent to which they match international criteria requires shedding light on the history of their development and the legal environment in which they were produced. Second, we consider the history of women liberation movements in the different countries, and their link to the legal and constitutional texts.

## Challenges

The researchers have faced and tackled some difficult challenges while keeping the level of objectivity and professionalism at a maximum. The study was conducted at a time when critical political conflicts are still raging in the Arab region, and while solutions are still being negotiated. Some of the difficulties and challenges faced in this study are connected with the current divisions relating to the constitutional processes. The researchers noticed divergences in the opinions of the interviewees and literature in several of the countries under study. There was often a lack of accurate information, and instead, emotional and sentimental assessment of events made way. Each event has had different, and sometimes contradictory descriptions. This required time and effort to assess all the narrations and events, in order to obtain consistent accounts describing the events faced by these countries.

The political division has not been the only obstacle. Issues related to security were another challenge in many of the countries. In Syria and Libya for example, violence has prevailed for several years.

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<sup>3</sup> *Ibid.*

Communicating with different individuals in the constitutional context has been complex, sometimes impossible, especially in light of individuals that have ventured into refuge or asylum in search for safety and stability. Furthermore, due to the general lack of transparency in the constitutional processes, obtaining information relating to the transitional process was very difficult.

Our experiences in Tunisia and Egypt have been the exception. The countries have allowed for access to the reports of constitution-drafting committees. These reports formed the basis of many of the discussions surrounding the preparations of the respective constitutions.

The path of political and constitutional changes has not ended. The region is still going through obstacles, and the improvement in some countries remains subject to fluctuation. This study covers the events until August 31<sup>st</sup> 2017, the date in which the authors had to finalise the study, aware that the further developments following this date could not be fully explored. It is hoped that events subsequent to August 31<sup>st</sup> 2017 will be covered elsewhere.

## The authors

This work is the product of a team of three academic experts. Dr. Hoda Elsadda from Egypt, an English and Comparative Literature Professor from the University of Cairo. Dr. Elsadda is a feminist and a member of the Committee of Fifty that drafted the Egyptian constitution. Professor Salsabil Klibi from Tunisia, teaches constitutional law at the Faculty of Legal, Political and Social Sciences at Carthage University. She is the Vice-President of the Tunisian Association for Constitutional Law and the Vice-President of the Arab Organisation for Constitutional Law. Dr. Ibrahim Draji, from Syria, is a professor at the Faculty of Law, University of Damascus. He is the co-author of the handbook *“ABC for a Gender Sensitive Constitution”*.

In the beginning of this project, the work was divided among the three authors. Each author was tasked to analyse from gender sensitive perspective the constitutional process in three countries and to write a reference paper. Upon these studies, Dr. Draji’s contribution is the chapter with comparative analyses of the contexts of political and constitutional transformations in the countries under study. Professor Klibi’s chapter compares the constitutional texts from a gender perspective. Dr. Elsadda concludes with a chapter on the lessons learnt from these events. The members of the team held regular meetings for over a year, read each other’s chapters, and discussed their work in order to harmonise the final report.

## READER'S GUIDE

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This study analyses the constitutional processes in nine Arab countries from a gender-sensitive perspective. The study is based on the same argument that has been made in previous publications<sup>4</sup>: that is, the process of constitution-making should not be limited to the inclusion of a few gender equality provisions. Rather, constitution-making must be based on a holistic, gender-sensitive approach. This means engendering the constitutional language as well as other legal texts. It also means to enshrine democratic principles at their core, explicitly protecting the rights of women, and ensuring women's equal representation and participation in the public and political spheres.

The first chapter describes the context in which the constitutional writing processes have taken place. It seeks to explain the course of events, the presence and the establishment of constitution-drafting and/or amending committees, including the degree of their input. The chapter also explores the role of civil society within these processes.

The second chapter examines the nine countries respective constitutions, the extent to which their language has been engendered, the relationship between religion and the State, including what status international law enjoys in these constitutions. In addition, chapter two highlights the existence (or non-existence) of mechanisms and the guarantees put in place in ensuring gender equality and the protection of women's rights.

The third and final chapter highlights lessons that can be learned by the reviewing the constitutional processes under this study. It discusses the timing of the drafting processes, and specifically assesses the new constitutions with the preceding ones. The chapter explores the temporary arrangements that could be put in place and the influence of civil society, as well as the impact made by regional and international parties during the constitutional process.

A glossary is included in the beginning, providing practical definitions of key terms used in the study.

A list of references and suggestions for further reading related to constitutional processes in the countries under study is provided in the final pages of this book. The reader will also find an Annex with a condensed version setting out the chronological events in each country.

Electronic links to the in-depth studies of the nine countries written in preparation of this study are also provided. They include more detailed information and gender-sensitive analysis of the constitutional processes in each country.

The information in this study is presented in an easy and accessible language, combining the narration and analysis of events, in addition to the interview-based testimonials of many of the actors involved in the constitutional processes. Examples are used to illustrate the various approaches adopted by constitution-makers in the selected countries, evaluating them from a gender-sensitive perspective.

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<sup>4</sup> See for example: S., Suteu & I., Draji, eds. *B. Jonsson & M. Alrahabi ABC for a Gender Sensitive Constitution*, Paris, 2016.

# GLOSSARY

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- Affirmative Action:** Deliberate measures and actions to improve the rights, opportunities and access to resources and responsibilities of women in order to compensate for structural gender imbalances and overcome exclusion of women in public and political space.
- Civil State:** This has two meanings: (1) State in which military forces do not interfere with State affairs and are accountable to civilian control. (2) Secular State or State in which religion is clearly separated from public affairs.
- Constitution:** A set of fundamental principles and values, typically contained in a single document, which establishes and regulates the division of powers within the State, as well as the rights, freedoms, and obligations enjoyed by individuals in that State.
- Culture and tradition:** Culture and tradition characterize differently all communities. They often serve as justification violations of women's rights or for not addressing women's discrimination and violence against them. The Beijing Platform for Action, 1995 affirms that: "No State may refer to national custom as an excuse for not guaranteeing all individuals human rights and fundamental freedoms."
- Democracy:** Political system, or system of decision making involving periodic elections and a plural party system, in which all individuals have an equal access to power, duties and responsibilities. Democracy implies freedom, dignity, physical and psychological integrity, equal access for all genders to resources and opportunities, health, education, and decision making. It implies also the elimination of any discrimination based on gender, ethnic origin, belief or other characteristic, as well as a comprehensive approach to women's rights as universal human rights.
- Democratic constitution:** A constitution based on democratic principles which combine the rule of law, respect for human dignity and human rights of women and men alike, gender equality and the principle of non-discrimination. A democratic constitution sets out the principles, values, and political and legal institutions necessary to democracy.
- Gender:** "Gender is the social construct of what is 'masculine' and 'feminine'. Gender is used to describe those characteristics of women and men which are socially constructed, while sex refers to those which are biologically determined. People are born female or male but learn to be girls and boys who grow into women and men. This learned behavior makes up gender identity and determines gender roles." (World Health Organization, 2002)

<b>Discrimination against women:</b>	“Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of women and men, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” (CEDAW, Article 1)
<b>Gender based violence:</b>	Gender based violence stems from gender inequality. This term qualifies gender inequality as a cause of violence, without identifying the victim or the perpetrator.
<b>Gender equality:</b>	The principle of gender equality refers to women and men enjoying the same opportunities, rights and responsibilities in all areas of life. Everyone, regardless of gender, has the right to work and support themselves, to balance career and family life, to participate in political and public life on equal footing and to live without the fear of abuse or violence. Gender equality also means that women and men are of equal worth and are equally protected before law and in law, and practice.
<b>Gender mainstreaming:</b>	Gender mainstreaming is a political and legal strategy to tackle formal and informal barriers to achieving gender equality by integrating the gender equality and gender power perspective in all areas and at all levels of society. “The process of assessing the implications for women and men of any planned action, including legislation, policies or programs, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programs in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetrated.” (ECOSOC, 1997)
<b>Gender power relations:</b>	A system of socially created relations that reflects the way in which power is shaped by considerations of gender and provides men with privileged access to power and material resources as well as status in society. Gender power relations cross all categories such as class, ethnicity, color, age etc., and contribute to other forms of inequality.
<b>Gender power structures:</b>	Prevailing patriarchal order of power structures in society which determine how power is held according to gender roles and expectations in which men are generally placed above women and which sustain and reproduce barriers to gender equality. Understanding these structures is a point of departure for approaching legislation and exploring fair treatment.

**Gender sensitive constitution:**

A gender sensitive constitution combines the establishment of the rule of law, equality between women and men and respect for the human rights and dignity of both women and men alike. Such a constitution adopts a gender perspective and pays attention to how issues of gender are dealt with and how provisions of the constitution impact on gender. It adopts gender sensitive language and specific gender equality provisions. Although social, political and cultural contexts are different, a gender sensitive constitution is framed by norms and standards that are grounded in the universality and indivisibility of the human rights of women and men.

**Secularism:**

The principle of the separation of the public, political and legal spheres from religion, where decision making should be determined by the public good, and through political and legal institutions whose decision making is not controlled or influenced by religious institutions or positions. Secularism is the only way to respect religious diversity and preserve the freedom of all beliefs.

**Violence against women:**

All forms of violence perpetrated against women. “Any act of gender based violence that results in, or is likely to result in discrimination physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberties whether occurring in public or private spheres.” (UN Declaration on the Elimination of Violence against Women 1993) While the term violence against women puts the spotlight on the victims, the term “male violence against women” is also used to highlight the perpetrator, in acknowledgement of the fact that 90% of its perpetrators are men. (World Health Organization)

# Acronyms

<b>AFTURD</b>	Association of Tunisian Women for Research and Development
<b>AMT</b>	Association of Tunisian Judges
<b>ATFD</b>	Tunisian Association of Democratic Women
<b>CPA</b>	Coalition Provisional Authority [Iraq]
<b>CSOs</b>	Civil Society Organisations
<b>FLN</b>	National Liberation Front [Algeria]
<b>GDP</b>	Gross Domestic Product
<b>HASHD</b>	Jordanian People's Democratic Party
<b>IMF</b>	International Monetary Fund
<b>ISIS</b>	Islamic State of Iraq and Syria
<b>LADDH</b>	Algerian League for the Defense of Human Rights
<b>LTDH</b>	Tunisian Human Rights League
<b>MENA</b>	Middle East and North Africa
<b>NCCCD</b>	National Coordination Committee for Change and Democracy [Algeria]
<b>NGOs</b>	Non-Governmental Organisations
<b>NCW</b>	National Council for Women
<b>NTC</b>	National Transitional Council [Libya]
<b>PUMW</b>	The Progressive Union of Moroccan Women
<b>RCC</b>	Revolutionary Command Council [Egypt]
<b>SCC</b>	Syrian Constitutional Court
<b>TAL</b>	Law of Administration for the State of Iraq for the Transitional Period
<b>VCLT</b>	Vienna Convention on the Law of Treaties
<b>WCWG</b>	The Women and Constitution Working Group
<b>WGU</b>	Women's General Union

## Part 1:

# THE CONTEXT OF THE CONSTITUTION DRAFTING PROCESS

Neither revolutions nor protests emerge from a vacuum. In fact, Newton's third law states that "for every action, there is an equal and opposite reaction". This has been the case in the revolutions of the "Arab Spring" which emerged as natural popular reactions to harsh acts and non-democratic practices perpetrated by the ruling regimes throughout the years. An objective reading of the reality that has prevailed in the countries under study, clearly reflects significant political, social and economic problems that paved the way for the events that unravelled.

The civil society is based on three pillars: plurality (parties, associations, foundations, lobby groups, amongst other); autonomy from the executive authority, within the limits of the law and; political tolerance and acceptance of differences. With regards to political and civil society activism, the countries under study are more or less similar. Bans, prohibitions, restrictions, and obstacles are terms that best express the difficulties faced by political parties and Civil Society Organisations (CSOs) in these countries. The measures, prejudicial in nature and obstructing of freedom and democracy, are common characteristics shared amongst the majority of the States under inquiry.

### A. General characteristics of the political context and the situation of civil society

Repression and restrictions have prevailed in the States under inquiry and alternation in power has been completely disregarded. Many of these States have prohibited the establishment of political parties and CSOs entirely or imposed severe restrictions on them, thus drastically reducing their potential of efficiency and impact. An exception is Lebanon where political parties and CSOs have had a larger margin of freedom at least with regards to their respective foundation and establishment.<sup>5</sup> The other countries have considerably negative records with regards to the lack of pluralism of political parties and the repression of civil society. One can distinguish three levels of restrictions that the studied countries have adopted:

#### Total prohibition

An example of this is Libya, where political parties have been completely prohibited. The former Libyan President, Muammar Gadhafi considered them as a tool for modern dictatorships.<sup>6</sup> In 1972,

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<sup>5</sup> *Civil Society Organisations (CSOs) in Lebanon have a larger margin of freedom and autonomy vis-à-vis the political regime. It is relatively easy to found them and they can start their activities immediately. See: A. Seif, "The Civil Society's role in democratisation and constitution drafting: The Lebanese experience and outlook" in: Constitution drafting during democratisation: Arab and international experiences from a comparative perspective, The Lebanese Institution for Permanent Civil Peace publications, Oriental Library (Beirut, 2014) p. 181. (Arabic) صياغة الدساتير في التحولات الديمقراطية. خبرة لبنان واستشراف. صياغة الدساتير في التحولات الديمقراطية. الخبرات العربية والدولية من منظور مقارن. المكتبة الشرقية دور المجتمع المدني في التحول الديمقراطي وصياغة الدساتير. خبرة لبنان واستشراف. صياغة الدساتير في التحولات الديمقراطية. الخبرات العربية والدولية من منظور مقارن. المكتبة الشرقية*; *The civil society reports presented to the Human Right Council show that during the last years, the Lebanese authorities have refused many notifications of association, this in addition to the illegal practice of investigating the founders, which is generally used to prohibit the establishment of new associations that deal with 'problematic issues'; Civil Society Organisations Sustainability Report for the MENA. USAID. (2012) p.32*

<sup>6</sup> *The Green Book is a political book written by Gadhafi in 1975 where he propagates his views on systems of rule and his observations on human experience related to socialism, freedom and democracy. The book was considered sacred by Gadhafi. See: M. Gadhafi, The Green Book, Libya, (Tripoli, 1975) p. 19.*

Gadhafi prevented the establishment of political parties, announcing that “*every partisan is a traitor*”.<sup>7</sup> Law No. 17 of 1972 incriminated the establishment of parties, associations and organisations and threatened with capital punishment. Without any distinction, the capital punishment would apply to anyone associated with such activities:

*“[...] anyone who founds, organises, manages, finances or provides a location for meetings of such a body; anyone who adheres to or encourages adherence to such a body by any means or provides any assistance thereto; anyone who directly or indirectly and by any means receives or obtains money or benefits of any type and from any person or entity with the intent to establish or prepare to establish the assembly, organisation, or formation [...]”.*<sup>8</sup>

By virtue of this system, the political movement led by Gadhafi consisted of ‘revolutionary’ committees assembled from all areas and social groups. The elites of these committees formed the link between Gadhafi and important families all over the country. Through these families, Gadhafi was able to mobilise his partisans and monitor his opponents. In return, some of the elite members acquired monopoly on key positions in the State, along with considerable benefits, made easy thanks to the oil wealth and treasury.<sup>9</sup>

The reality of the Libyan civil society did not differ from that of the Libyan political community. The regime forbade community assembly outside the scope of state conferences and popular committees. Gadhafi banned all forms of unions and associations, except for some charity organisations that were limited in number and efficiency.<sup>10</sup>

## Limited prohibition

An example of limited prohibition in the wake of the “Arab Spring” is Syria. The State has been suffering from stagnation and political isolation as well as a lack of a friendly civil society environment. This was due to a body of laws and practices that have been existing for several decades. The country has been under the status of emergency since 1963. The relevant laws have granted the government ‘absolute and exceptional’ powers which have in time become the convention and norm.

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7 This vision of Muammar Gadhafi can be found in his *The Great Green Charter for Human Rights*, August 12<sup>th</sup>, 1988.

8 The law (in Arabic) can be accessed via this link: <http://itcadet.gov.ly/wp-content/uploads/2015/12/law17-year1972.pdf>

9 Al Mawlidi, Al Ahmar: *Social Roots to the Modern State in Libya, the Individual, the Group and the Leadership Building to the Political Phenomenon*, Centre for Arab Unity Studies, (Beirut, 2009). (Arabic) *الجزور الاجتماعية للدولة الحديثة في ليبيا. الفرد والمجموعة والبناء* الزعماء للظاهرة السياسية

10 It is worth noting that, before and after Colonel Gadhafi came to power, Libya witnessed a series of legislations on unions and Civil Society Organisations, in addition to Law no. 17 of 1972. The paradox lies in the fact that the margin of freedom allowing the creation of associations, organisations and unions and joining them, and the safeguards related thereto, declined with time: the 1970 Law was worse than the 1953 Law, and the 2001 Law was worse than the 1970 Law. The Law of 2001 calls for strict adherence to the procedures related to the establishment of associations. It has set a system of prior and continuous oversight of the associations and organisations’ activities, by informing the People’s Committee of any meeting to be held, previously, under the 1953 Law where only judicial post-oversight applied. See E., Kamel Al Makhour, ‘Libyan Civil Society Institutions, Shadow Institutions’ (Arabic).

Accessible via the following website (Arabic): <http://www.libyaforum.org>

Syria has been a single party State held by the Arab Socialist Ba'ath Party.<sup>11</sup> Political parties' plurality has been prohibited, except for the ruling Ba'ath party, and in theory, a few number of parties, with limited outreach. Such parties were supposed to be in "alliance" with the Ba'ath but in reality, they have been affiliated to it. This "alliance" was commonly referred to as the "Progressive National Front", which was entrenched in the Syrian constitution of 1973, Article 8:

*"The leading party in the society and the State is the Socialist Arab Ba'ath Party. It is the one leading the society and the State and leads a patriotic and progressive front seeking to unify the resources of the masses and place them at the service of the goals of Arab nations."*

Article 8 eliminated plurality of political parties and installed a legal distinction between citizens based on their political affiliation. This has led to one party monopolising power and authority.<sup>12</sup>

For Non-Governmental Organisations (NGOs), Law No. 93 of 1958 governs the establishment of associations. The law is based on the principle that the State must control society, and have a right and responsibility to guide it. It provides government and security officials ample means to intervene in the establishment, internal governance, and the day-to-day operations of NGOs.<sup>13</sup> The dominant role of the government has been reinforced by other legislations, prohibiting the establishment of several NGOs. The ruling Ba'ath party has created a network of adjoining unions for all sectors of society. These unions have monopolised all activities in the sectors. They are limited to sports' clubs, religious associations, and social clubs described as CSOs.<sup>14</sup> These unions have neither fulfilled the criteria, nor have they assumed the role of an active and independent civil society. Thus, the situation has effectively led to the total absence of political parties' life which has deprived the Syrian civil society of making a substantial contribution.<sup>15</sup>

## Restricted freedom

Examples of restricted freedom include countries like Tunisia, Jordan, Algeria, Morocco and Egypt. These countries have adopted laws that in theory, allow for political plurality and autonomous civil society. In reality however, enforced restrictions and complications have limited the freedom to engage with public life. For example, parties and CSOs are required to obtain prior permission to register as opposed to a notification of registration which is the case in democratic countries.

## Particularities of the political context and the situation of civil society in the countries under the study

### - Tunisia

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<sup>11</sup> To read more about this topic see: Caroline Donati, *The Syrian Exception: Between Modernization and Resistance*, translated into Arabic by Lama al-Azb, Riyad el-Rayyes Books, 1<sup>st</sup> Ed., (Beirut, 2012), p. 207.

<sup>12</sup> R. Zaytoun, 'Democratic Constitution and the Syrian Constitution' (الدستور الديمقراطي والدستور السوري), in *Majalat al-adab*, (Beirut, October 2008). Accessible via this link: <http://www.alsafahat.net/blog/?p=6189>

<sup>13</sup> Human Rights Watch, *No Room to Breathe: State Repression of Human Rights Activism in Syria*, October 16<sup>th</sup>, 2007.

<sup>14</sup> (Students, workers, farmers, lawyers, medical doctors, women etc.)

<sup>15</sup> In June 2005, The Ba'ath Party Congress recommended the enactment of a new law for political parties that would allow the formation of new parties not based on ethnicity or religion. However, and until the eruption of events in Syria in 2011, no draft law has been officially adopted.

Following Tunisia's independence, there has been no real political diversity. One political party has monopolised power and ruled for over six decades. Despite the change of its leaders and the change of its name, it has remained the only power in the country.<sup>16</sup> Plurality and competition characteristic to a democratic political life was prohibited. Although Article 8 of the Tunisia's founding constitution of 1950 guarantees the freedom to establish political parties, the party has acted in contrary to it. It has made the Article void of its meaning by compelling political parties to obtain a permit issued by the executive authority, that is the Minister of Interior. This has remained unchanged even after the issuing of the Political Parties' Law of May 1988.

Like political parties, CSOs have faced a similar fate: oppression, censorship, marginalisation, exclusion, restriction, and hindrance. Political parties and CSOs have been subject to the same legal framework. Before 2011 however, Tunisian CSOs were able to assert their presence as their number exceeded 9,000.<sup>17</sup> Most of them did not focus on public issues, but rather on professional, sports-based, school-based, and artistic sectors. Those organisations that worked in the political or public domain were union-based. A few of these associations clashed with the authorities due to the nature and scope of their work. They served as informal political oppositions that monitored the actions of influential public figures. They also pressured public figures in exposing and denouncing their arbitrary use of power. At the same time, they struggled for their own survival because of the almost complete lack of financial and logistical support.<sup>18</sup> Among these associations are the Tunisian Human Rights League (LTDH)<sup>19</sup>, the Association of Tunisian Judges (AMT)<sup>20</sup>, the Tunisian Association of Democratic Women (ATFD)<sup>21</sup>, and the Association of Tunisian Women for Research and Development (AFTURD)<sup>22</sup>. They all fought for human rights, especially the right to participate in political life, gender equality, freedom of expression, association, and of the press.

## - Egypt

In January 1953, the Egyptian Revolutionary Command Council (RCC) issued a decision to dissolve all political parties, which paved the way for the era of single party rule. In 1956, the RCC issued Decision No. 384, which amplified the role of administrative authorities in controlling CSOs and curtailed the work of civil society. The decision considered all CSO violations under the law to be of a criminal nature, punishable with prison sentences. Despite the widening of the political space in 1977, and the enactment of a political multi-party system, restrictions on permits remained. In 1980s however, a new economic model was adopted, leading to the withdrawal of the State from providing basic

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<sup>16</sup> *The New Free Constitutional Party established and headed by President Habib Bourguiba in 1934. Its name changed on the occasion of the party's seventh conference on October 1964 to the Socialist Constitutional Party. With Zine el-Abidine Ben Ali coming into power after Bourguiba on the 7<sup>th</sup> of February, 1987 its name was again changed in February 1988, to The Constitutional Democratic Rally.*

<sup>17</sup> *For a detailed map of associations in Tunisia and their fields of specialisations, visit: [http://www.ifeda.org.tn/ar/index.php?id\\_page=13&lang=ar](http://www.ifeda.org.tn/ar/index.php?id_page=13&lang=ar)*

<sup>18</sup> *The Public Funding System of Associations in Tunisia, Kawakibi Democracy Transition Center, (December 2014).*

<sup>19</sup> *The LTDH was established in May 1977.*

<sup>20</sup> *The Association of Tunisian Judges (AMT) was established in 1990 after the government dissolved the Young Judges Association in 1985.*

<sup>21</sup> *The Tunisian Association of Democratic Women (ATFD) was established on August 6<sup>th</sup>, 1989.*

<sup>22</sup> *The Association of Tunisian Women for Research and Development was established in January 1989.*

public services. The gap produced by the change in the role of the State made way for CSOs to fill. Hence, the 1980s witnessed the rise of a new generation of CSOs working in the field of development and service provision. New organisations also appeared in the field of human rights, defending marginalised people by using new work mechanisms.<sup>23</sup> Regardless, the State continued to implement CSO-restrictive laws viewing them with suspicion and concern. This has obstructed a collaboration between the two, which have in effect obstructed a potential relationship whereby the two could work and grow together as partners in the development and social progress of society. Thus, membership and impact of organisations have in effect remained limited, with one exception: religious associations. Religious associations have benefitted from the relative openness in the public sphere. They have been capable of widening their participation and impact.

Following the January 25<sup>th</sup> revolution, the role of rights-based organisations and CSOs became eminent. While CSO had also submitted reform projects and proposals, the decades of isolation by the State limited their role into providing advice, ideas and services. Thus, CSOs have not had the necessary requirements for leading the change after the revolution, leaving the field open for Islamist groups.

## - Algeria

Algeria was for many years under the authority of a single governing party, the National Liberation Front (FLN). The party seized power following Algeria's independence and retained it until the adoption of the 1989 constitution. Under previous constitutions, the military force played a major role in allowing the single party to lead popular masses and set national policies. The 1989 constitution as well as the subsequent ones, abandoned the single-party system and political monopoly. Efforts were exerted to embed democratic practices in legal texts through the drafting of a legal system that allows for political diversity and guarantees freedom of association, assembly, speech, and expression.<sup>24</sup>

The early years of the "political diversity" period was marked by many failures that carried severe and tragic consequences. The country rapidly entered into what is commonly referred to as the 'Black Decade'.<sup>25</sup> An emergency law was imposed which unleashed the capacity of authorities to

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<sup>23</sup> See Amani Qandil, *Civil Action and Social Change: Women Organizations, Defense, Opinion, and Development in Egypt* (Arabic) العمل الأهلي والتغيير الاجتماعي، منظمات المرأة والدفاع والرأي والتنمية في مصر، Al-Ahram Center for Political and Strategic Studies (ACPSS), (Cairo, 1998).

<sup>24</sup> Samir Chaaban, *Civil Society and Its Influence on Constitutional Amendments: A study in the light of the Algerian civil society reality* (Arabic), University of Batna, الجزائر واقع المجتمع المدني في الجزائر. Link to the study: <http://www.djelfa.info/vb/showthread.php?t=210418>

<sup>25</sup> "The Black Decade" began after the cancellation of the second round of legislative elections in December 1991, when the Islamic Salvation Front was almost winning. The situation escalated and the country fell into a long cycle of violence causing the resignation of a President and the assassination of another, while the army was taking effective control of the country. With the prohibition of the Islamic Salvation Front, the arrest of its leaders and the increasing phenomenon of armed religious extremism, the country suffered from long harsh years of cruel repression and arbitrary violence, claiming the lives of more than 150 000 people, leading to the disappearance of 7 000 others and the internal displacement of about a million Algerians. Thousands were tortured, raped or abducted and material damages amounted to 20 billion dollars. See: Dalia Ghanem Yazbek, *Algeria on the Verge... What Have Seventeen Years of Bouteflika Achieved?* الجزائر على حافة الهاوية. ماذا حققت الأعوام السبعة عشر من حكم بوتفليقة؟ Carnegie Middle East Center, 2016. Link to the study: <http://carnegie-mec.org/2016/04/28/ar-pub-63483>

narrow down political activity and to disregard several freedoms.<sup>26</sup> Multiple decrees constraining the exercise of freedom of speech and expression were issued, including the decree of 'Counter Terrorism and Vandalism' of September 1992. Despite consecutive Algerian laws entrenching citizens' rights and freedoms to form associations, these were heavily restraining. The authorities feared the establishment of associations and organisations that could potentially threaten the ruling power and the single party entity to which six prominent public organisations at the time were affiliated.<sup>27</sup> They were ideologically and administratively subject to the single ruling party and its orders.<sup>28</sup> During the years following the end of the "Black Decade", registration of CSOs and institutions increased. According to statistics by the Ministry of Interior, roughly 100,000 organisations existed by the beginning of the "Arab Spring" in 2012.<sup>29</sup> However, their lack of autonomy and independence prevented them from effectively participating in public affairs.

CSOs in Algeria have struggled with hegemonic policies and limitations adopted by consecutive governments. Several laws have granted the government full power including the power to dissolve organisations and suspend their action, to decide over their funding process and to exchange financial subsidies for a pledge of allegiance to the State. These have affected the independence of civil society and organisations have been affected by replacement of independent leaders with affiliates to the government.<sup>30</sup> Moreover, the State has exerted efforts to weaken their role by creating competitive institutions.<sup>31</sup> All of the above indicate a lack of independence and a limited capacity for such organisations to execute their projects. It has created a sense of distrust among parties and between the parties and the State. This restrictive political environment has had an

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<sup>26</sup> Loutfi Bou Maghar, Nouran S., Ahmed, *Protest Movements in Algeria. 2*, الواقع والافاق , الجزائر. الحركات الاحتجاجية في الجزائر, nd ed., Edited by Amr El Shobaky, *Markaz dirasat alwihda al-Arabia*, (Beirut, 2014), p.321.

<sup>27</sup> These were: The General Union of Algerian Workers; People's Mojahedin Organisation; National Union of Algerian Youth; National Union of Algerian Farmers; National Union of Algerian Women and; scientific, cultural and vocational institutions.

<sup>28</sup> Samir Chaaban, *Civil Society and Its Influence on Constitutional Amendments: A study in the light of the Algerian civil society reality* (Arabic), University of Batna, الجزائر. المجتمع المدني في ضوء واقع المجتمع المدني في الجزائر. *المجتمع المدني وتأثيره في التعديلات الدستورية*. قراءة في ضوء واقع المجتمع المدني في الجزائر. Link to the study: <http://www.djelfa.info/vb/showthread.php?t=210418>

<sup>29</sup> The Ministry of Interior and local communities counted 93,654 organisations accredited by the State and active on both local and national levels, according to an inventory published in January 12<sup>th</sup>, 2012. Refer to Dr. Marzouki Omar, 'Civil Society and Democratic Transition in Algeria' الجزائر - التحول الديمقراطي في الجزائر, study published in the Arabic Future Magazine. Edition 432, Center for Arab Unity Studies. (Beirut, February, 2015) Page 38.

<sup>30</sup> For example, with regards to funding, the State imposed its supervision on all foreign grants and financial assistance received by CSOs. CSOs also suffered administrative and procedural complications aiming at controlling them and keeping them under the State supervision; the legislative frame imposed multiple constraints like registration, accreditation and notification; the authorities have to give their approval before the start of any activity and the law sets ambiguous conditions for the establishment of an organisation; examples of which may be: not to violate public order nor stir sedition. These conditions are used to contest the establishment of associations with which the government does not feel comfortable. The administrative authority was as well given the right to dissolve the organisations for multiple reasons. Moreover, the laws granted large prerogatives to the government through the competent ministerial sectors like the Interior, Labour and Youth in monitoring the work of CSOs; these prerogatives transformed practically into a kind of supervision and custodianship that reduced the independence of CSOs.

<sup>31</sup> Like the creation of the Advisory National Assembly for the Promotion of Human Rights to compete with the Algerian League for the Defence of Human Rights, refer to A Move Towards Political Liberalism in Algeria الجزائر نحو الليبرالية السياسية في الجزائر. Link to the study: [www.univ.chlef.dz/uabc/seminaires\\_2008/dicembre\\_2008/com\\_dic\\_2008\\_21](http://www.univ.chlef.dz/uabc/seminaires_2008/dicembre_2008/com_dic_2008_21). page 14

impact on the ability of women's organisations in Algeria to organise themselves and be active. In addition, women's organisations have also been affected by conflicts of political currents. This is reflected as well in the divisions and confrontations between Islamist and secular women's organisations.<sup>32</sup>

### - Morocco

Like other Arab States, political competition among parties have been absent in Morocco. The hegemony of the monarchy has reduced the margin of political movement for parties that were active following the country's independence. The established political parties during the late King Hassan II were kept under his control. They were called the 'Makhzaniyya' (governing elite) parties loyal to the King. The Constitutional Union established in 1983 is one of them, created in order to give the impression of political dynamism in the country.<sup>33</sup>

When King Mohammed VI ascended the throne, more than twenty new political parties were established in addition to the old, active parties. Nonetheless, party pluralism has remained limited. The royal institution has insisted to determine the scope of political action. For example, despite the relative openness of the political system, the continuous decline in the number of female and male voters in elections illustrates that voters have been aware of the artificial nature of political pluralism.<sup>34</sup> In reality, such a perceived pluralism is being kept under the custodianship of the monarchy.<sup>35</sup>

With regards to the civil society, Morocco has faced similar difficulties such as those of political parties. Associations have been impeded by the refusal of the authority to be subject to criticism and monitoring - both of which are at the centre of civil society's ethos and activities. This explains the quasi-total absence of CSOs from the public space since the early 1970s, as well the several ups and downs the Moroccan women's movement have been going through. At an early stage, the movement emerged in Morocco, and it represents one of the most important pillars of civil society, as well as one of the most important manifestations of the democratic movement. The Progressive Union of Moroccan Women (PUMW) established in 1962, was among the first feminist organisations that engaged in the struggle for gender equality and for the reform of the Personal Status Law issued sometime between 1957 and 1958.<sup>36</sup> The movement has faced several political impediments. These include from accusations of being at odds with Islamic Sharia by attempting to alter the identities of State and society because of the demand to revise Personal Status Law<sup>37</sup> to include women's

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32 Muzay Bilal, "Civil Organizations as the Basis for Development in Algeria" (Arabic) *الجمعيات المدنية كأساس لتفعيل التنمية السياسية بالجزائر* in *Political and International Relations Studies*. No 1, January 2015, p.143.

33 See the list of active parties in Morocco via the following website: <https://www.maroc.ma>

34 After the ratio was two thirds of the total female and male voters in the seventies of the past century, it regressed to half the total in the 2002 elections and to one third in the 2007 elections. See Ahmad Al Khamsi op. cit.

35 See in this regard Abd Al Ilah Belqazbaz, *Authority and Opposition – The modern Arab political sphere* السلطة والمعارضة - المجال السياسي العربي المعاصر. Arab Cultural Centre, (Casablanca- Beirut 2007).

36 The personal status law was issued in virtue of 5 decrees, the first one being developed on the 22<sup>nd</sup> of November 1957 and the last on the 3<sup>rd</sup> of April 1958.

37 Laws of personal status cover matters such as marriage, divorce, child custody, and inheritance. They are prevalent in several Arab countries, in particular those states that were part of the Ottoman Empire.

dignity and full rights. Despite this, the movement has been capable of conveying the necessity of reforming the legal and social status of Moroccan women.

Experience and practices of the above illustrates that the aforementioned States have resorted to restricting and prohibiting the work of political parties and CSOs for several decades. New State leaders seem to feel that granting freedom may compromise their independence and that plurality, transparency and openness would affect their own security, and the security of their governments. As a result, the countries under study have not experienced any real rotation of power. They have never experienced democratic elections, monitored and prepared for by CSOs. Nor have they experienced political parties that have competed in such elections in an equal and transparent manner. Instead, many misgivings have surrounded these elections where parties have been banned from entering the election races. Parties have been hindered by laws governing election processes, and even the circumstances surrounding the election process itself, as it has lacked proper guarantees from fraud. In the majority of the countries under study, the sole governing party have continued to rule the country for decades on end, only to be replaced upon the death of their leaders or through a State coup. Whether it is the Constitutional Party in Tunisia, the National Democratic Party in Egypt, the Ba'ath Party in Syria and Iraq, or the FLN in Algeria – they have all adopted similar policies and have resorted to similar practices in ruling the country uncontestedly and without accountability. Such practices have paved the way for present events taking place in the region.

### **Imposed restrictions on political parties and civil society organisations and repercussions**

The women's rights movements have been greatly affected by the prohibition and restriction policies followed in the majority of the studied countries. They have also been subject to marginalisation and exclusion.

In light of the repression that have prevailed in Libya, Gadhafi banned the only women's association that existed in Libya since the country's independence, the Libyan Women's Union. It was replaced by the Revolutionary Women's Groups, similar to the People's Committee. These were the only social organisations, and they were harnessed to promote the regime's ideology and to contain society, and keep it under its control. In Jordan, the general weakness of civil society has had a negative impact on social and human rights movements in general, and in particular, the women's rights movement. Once, the government abandoned its development projects by seeking to contain popular institutions and transforming them into vehicles for official policies, the role of the Arab women's movement also regressed.<sup>38</sup> In Syria, according to a 1975 Syrian Law, it is prohibited to form women's organisations, except for the Women's General Union (WGU) of the Ba'ath party.<sup>39</sup>

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38 *Abla Abu Elbeh, "Women and social movement in Jordan in the "Arab Spring" "الربيع العربي" في الأردن في مناسبات الربيع العربي", in Women and the Arab Spring: Regional Conference Facts under the supervision of Areeb Al Rintawi. وقائع مؤتمر الربيع العربي، وقائع مؤتمر اقليمي، Jerusalem Centre for Political Studies, (Amman, 2014), p. 56*

39 *On the 23<sup>rd</sup> of April 2017, law decree Nb. 16 on the dissolution of women's general union and the abrogation of laws regulating it was issued; it transferred its members to other governmental positions, provided that the union be replaced by the Ministry of Social Affairs and Labor with all its rights and obligations. The law: Law No. 33 of December 21 1975.*

The fight for the rights of women has been impacted negatively because even those who were open to it have not prioritised it in light of the security and economic challenges. Progressive leftist forces have not considered this cause to be among their political priorities leaving ample room for conservative groups to fight against the rights of women on ideological grounds. The feminist movement in Morocco for example has been on the one hand faced with despotism which effectively limited their activity and made their actions more difficult. On the other hand, they have faced political movements that oppose the monarchy, while promoting a backward vision of society and in particular, women. This is reflected in what was called the 'family law battle' that began by the end of the 1970's. Feminist movements launched a campaign which was aimed at removing the family law from the domain of Sharia, to the legal domain in accordance with international standards of gender equality and non-discrimination. The battle resulted in some reforms, such as the setting of an equal minimum age for marriage for both sexes (18 years), cancelling the principle of custodianship for adult women, and linking legal questions of divorce to the courts. It unveiled the true positions of the society and the monarchy in this regard. Society was not mature enough to endorse feminist causes which was shown by the overall power disfavouring women. Although the ruling authority made promises of redressing the legal and social status of women by reforming the family law, King Mohammed VI admitted that he was determined to bring about this reform in his capacity as a Commander of the Faithful'. He based the reform projects on the Quran and the Sunnah, because "women are sisters of men".<sup>40</sup> This religious justification has greatly affected the level of the wished relevant reforms.

In addition to the above, the restrictive governmental policies were probably one of the main reasons for the subsequent events in the Arab region. When a population is not allowed to change its rulers in a democratic way, revolting should not come as a surprise. Political parties and CSOs play different roles and functions, such as guiding and organising popular movements, expressing their ideas and advocating for their rights, as well as ensuring that these movements follow a peaceful course. However, where such forces that are supposed to represent and defend the population are prohibited from doing so, it is to be expected that society will resort to protests in public squares to claim and defend their presence. The absence of safe and democratic channels for people to express their anger or opposition leads to revolutions. Restrictive practices such as these have not only caused revolutions. They are also having an impact on the present by complicating the transition process that is assumed to take place in the "Arab Spring" countries. The transition period in the majority of "Arab Spring" countries are thus marked by a power vacuum resulting from bans and repressions of political parties as well as weak or non-existent civil society.

For decades, ruling regimes have crushed any opportunity or space for finding alternatives, whether individuals or parties. Therefore, no qualified substitutes could fill the void and assume the role once they were forced out of power. This have driven these countries towards an unknown fate, some of which are today still suffering from it. Moreover, this vacuum shows an underlying danger of allowing religious forces to thrive by using religious discourse and their ability to mobilise the people. Civil

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40 This was declared by King Mohammed VI in his speech of the 27<sup>th</sup> of April 2001 at the occasion of him nominating the consultative committee tasked with reforming the family law.

society has been unable to control this evolution and to assume its role of enlightening and warning the public, highlighting risks, presenting options and alternatives. This has enabled different religious currents to win during primary elections that were held in the first countries of the “Arab Spring”, Tunisia, Egypt, and Libya, whether in electing the President, the Parliament, or the Constituent Assembly in charge of drafting the country’s constitution.

The experiences of the countries under study shed light on the link between the limited influence of civil society and political parties, and the possibility of the outbreaks of revolutions. In societies that have had active political parties, vibrant and effective civil society, such outbreak is less likely. Upon refusing a certain policy, the people would then have democratic means of expression at their disposal, including organised demonstrations, without having to spontaneously take to the streets to present their views and demands - as was the case of “Arab Spring” revolutions - and risk an unpredictable turn of events. One can, in this case, recall the Lebanese experience. Despite all the problems of the country, which also have an impact on parties and CSOs, there has been no spill-over of “Arab Spring” uprisings on the streets of Beirut. According to the views of several interviewees, this was because of the large margin of freedom granted to political parties and CSOs compared to other countries of the “Arab Spring”.<sup>41</sup>

The more freedom and margin of manoeuvre political parties and CSOs have, the easier and less violent the democratic transition processes will be. This has been evident in the Tunisian and Egyptian experiences. Despite years and policies of oppression, the presence of some parties, unions, activists, and CSOs on the ground have greatly facilitated the transition process, with the least amount of violence, compared to Libya for instance. In this regard, the Tunisian civil society quartet received the Nobel peace prize in 2015. The quartet was honoured and recognised for the role played and the efforts during the State’s democratic transition process.<sup>42</sup>

## B. Neo-liberalism and its negative impact on society

During the 1990s, the world entered a new political and economic era. The fall of the Soviet Union marked an end to the Cold War and the bipolar world order. The transformation of the world order brought about the issue of transition. Globalisation, governed by neo-liberalism and economic neo-liberalism, witnessed a transition from socialist and command economy systems to a free market system. The latter is founded on a number of principles, the most prominent one is market hegemony. The principle consists of lifting all government restrictions on private projects, regardless of the

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41 Many interviewed Lebanese dignitaries and representatives of CSOs noted that the ‘relative freedom’ reality in Lebanon helped it prevent the risks. Peaceful demonstrations, the right of assembly, of establishing parties, criticizing the authorities, as well as the freedom of press are all allowed *de facto* and *de jure* to a reasonable extent. Hence, there was no ‘political inhibition’ that burst out through popular revolutions as was the case in the other Arab countries.

42 The Nobel peace prize was awarded for the intervention of the National Dialogue Quartet, made up of: the Tunisian General Labour Union (UGTT), the Tunisian Confederation of Industry, Trade, and Handicrafts (UTICA), the Tunisian Human Rights League (LTDH), and the Order of Lawyers. They tried to bring the different parties closer together when the crisis climaxed between the Ennahda-led coalition of the National Constituent Assembly (NCA) and the opposition parties after the assassination of the NCA member Mohamad Brahmi on July 25<sup>th</sup>, 2013. This crisis threatened the entire constitutive process had the Quartet not intervened.

social repercussions and damage it might entail. Principles of market hegemony also include imposing spending cuts on social services, under the pretext of limiting the State's role, reducing government intervention, and adopting privatisation which consists of selling enterprises, goods, and services owned by the State to private parties. Thus, economic neo-liberalism has replaced the concepts of "public good" and "society" with the term "individual responsibility".

The majority of Arab countries under study have been largely affected by the policies of neo-liberalism and the consequences it has carried with it. Countries have adopted a number of economic strategies in order to adapt to the new-found reality. Egypt for instance, is a signatory to the Economic Reform and Structural Adjustment Program with the International Monetary Fund (IMF).<sup>43</sup>

Jordan began adopting neo-liberal policies in 1989. The country responded to the pressure exerted by the World Bank to reduce subsidies and adopt restructuring and austerity programs.<sup>44</sup> These policies gained more ground in 1999, when King Abdullah II took the throne. In Syria, calls were made by economists and businessmen to the government to reconsider its economic policies. Such calls involved a liberalisation of trade and opening of local markets to foreign products. In particular, the calls related to a greater effort in attracting capital, limiting State intervention in economic affairs and allowing market mechanisms to set prices. The purpose was to remember the influence of privatisation and for the country to jump on the globalisation train. Behind this new approach was a liberal economic ideology with a market-oriented, globalisation and capital-interest influence.<sup>45</sup> Things have not been very different in Algeria. An economic reform process adopted by the State began with Shazli Ben Jdid in the early 1980s and 1990s when the country began to sign agreements with the IMF. They involved the implementation of economic liberal ideas.<sup>46</sup> This had repercussions on the socio-economic situation of the rich country which is considered to be the fourth largest crude oil producer in Africa, and the sixth largest gas producer in the world. The main observation here is that the majority of these new policies disregarded the social dimensions of these strategies.

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43 It is worthy of note that in 2010 - a few months prior to the eruption of the revolutions- both Tunisia and Egypt (initiators of revolutions) were highly commended in the IMF reports. The Egypt report praised it for the implementation of the reform program and its wise economic policies. The report neglected any mention of good governance, nor did it express any concern towards the foreign debt which had reached 32 billion dollars. The report's conclusion referred to the improved relations between Egypt and the World Bank Group due to the former's achievements in implementing the reform program. The lack in the reports was evident because, although the economic growth model did benefit some citizens, it created very difficult conditions for the poor and those with limited income. This was due to rampant corruption, misdistribution of wealth and the spread of favouritism. All these practices led to the exacerbation of the bad living conditions of the majority of Egyptians and they were the main reason behind the wide-scale eruption of the revolution and large sectors joining it.

44 Jordan Country Report, Bertelsmann Stiftung's Transformation Index (BTI), 2016:

[https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI\\_2016\\_Jordan.pdf](https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI_2016_Jordan.pdf)

45 Munir Hamash, *The Social Aspects of Economic Reform* (الجوانب الاجتماعية للإصلاح الاقتصادي), Syrian Economic Society. A study presented at the 15<sup>th</sup> economic Tuesday seminar on economic and social development in Syria (16/4/2002). See study website: [http://www.mafhoum.com/syr/articles\\_02/hamash/hamash.htm](http://www.mafhoum.com/syr/articles_02/hamash/hamash.htm)

46 During that time, law 01-88 of January 1988 was issued. It stopped all socialist institutions of economic aspect and public institutions were privatised. The Algerian dinar was devaluated in comparison with other foreign currencies and the State monopoly over foreign trade was stopped in August 1990, the monopoly was cancelled in February 1991.

Such strategies have dangerous repercussions that goes beyond economy – they have an impact on the social security of the country. In Tunisia, these policies have affected the competitive capacities of economic actors in both the public and the private sectors. In turn, they have prejudiced vulnerable groups, namely the youth that have found no future prospects because of the difficulty in entering the labour market, as well as the lack of personal capacities and governmental support to establish their own businesses. It has also widened the gap between the inner regions and the coastal ones in the country's development, and the possibility to have both equally involved in the economic cycle.

In Syria, the policies and measures set a few years prior to the outbreak in 2011 have resulted in the deterioration of the economic situation and living conditions. The policies and measures have caused further dysfunctions in management and economic branches, as well as reduced performances of the government in particular with regards to social services and investment projects. The situation has made an impact on the market, and an enormous gap has emerged between incomes and resources. This has highly affected the middle class who has been receding towards the circle of poverty and unemployment due to limited work opportunities in the public sector and the private sector's mediocre employment ability. The track followed by the majority of the States under study shows that they have resorted to privatisation, thereby abandoning the principles of public sector in the country.

Egypt began to privatise the public sector in the 1990s. Many State companies and establishments were sold. Tunisia privatised some of the public institutions, claiming that they fell under competitive sectors, ruled by the private sector. As such they were not perceived as vital sectors required to fall under the monopoly of the State.

Implementation of neo-liberal policies is considered by many to lead to a Gross Domestic Product (GDP) growth in countries. Hence the policies have been promoted for being successful. However, they have had terrible effects on the majority of the population. State services such as health and education have declined and wages have been reduced with increasing rates of unemployment.<sup>47</sup>

These policies and the privatisation undertaken have led to the loss of a significant number of jobs. The long lines of unemployed individuals have later transformed into endless human reservoirs of rebels. In some countries, they have been peaceful rebels and in others, they have been armed. The gap between social classes has widened: disparities have expanded: between the rich and the poor; those who work and those who are unemployed and the educated and those who have not had access to education. The middle class has disappeared because of privatisation and corruption. In Tunisia for example, the gap between university graduates and unemployed individuals has increased and is aggravated by a gender gap in terms of access to education and work. This is all the more striking because the family planning policy adopted by President Bourguiba since the 1960s had led to a 2.2 fertility rate among women, and to an early transformation of the social role of women as no longer merely reproductive individuals.

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47 Joelle Benin, "Political economy, labour movements and popular uprisings in 2011", *Bel-Ahmar*, February 2017. [<http://bel-ahmar.net/?p=28>]

Nevertheless, the unemployment rates in 2016 reached 12.5% for males and 22.8% for females - 20% and 39% for university graduate males and females respectively.<sup>48</sup>

Reports show that in Lebanon, on the eve of the “Arab Spring”, around 28% of the Lebanese population fell into the poverty category and 8% into the extremely poor category. Unemployment reached very high rates among the poor, with a majority of them falling within the category of unskilled workers.<sup>49</sup> In Egypt, the government amended its labour laws in 2003 in order to grant employers more control over their employees, in terms of recruitment and dismissal and in line with free market and privatisation rules. As a result, many employees were dismissed while others lost their jobs and financial security.

Official numbers in Syria indicate that unemployment rates reached 11% in 2009. However, unofficial statistics estimated the unemployment rate at 20%. In 2010, the poverty rate increased to 12% according to official statistics, but unofficially, it reached up to 34%.<sup>50</sup>

In Algeria, the neo-liberal policies aimed at diminishing the size of the State apparatus resulted in the layoff of a great number of employees and workers. It affected in particular, university graduates, professionals and craftsmen which effectively led to a large category of marginalised people. These groups led the famous 1988 protests, and later on, the 2010 protests. There was a high unemployment rate among the youth, which according to official numbers reached 20% (other sources report even higher numbers).<sup>51</sup> Deterioration of the labour market, lack of adequate living conditions, and increased disparities accrued during the years of liberal structural reform. It effectively contributed to the expansion of poverty which was mainly reflected by the deterioration and the absence of incomes as well as lack of access to basic social services.<sup>52</sup>

The same policies have led to similar consequences in Jordan which resulted in the escalation of protests among different categories of female and male citizens such as workers and public servants. Similarly, in Morocco the closed political regime of the Kingdom that has ruled for decades did not prevent people from resorting to the streets to defy the power. It was prompted by the economic crises similar to what had earlier been referred to as the “famine uprising” and “bread uprising” in January 1984. This indicated early on that social tensions in Morocco were predominantly caused by economic problems.

The disparity is not only limited to persons and social classes. It has also affected the urban and rural areas. Governments formed or supported by businessmen focused on the development of specific

48 Statistics available on the official site of the National Institute of Statistics at: <http://www.is.tn>

49 “Poverty, growth and income distribution in Lebanon”, UNDP 2010. Beirut. Lebanon. P. 13.

50 Sinan Ali Dib, “The Social Implications of Economic Policies” (2005-2010) الانعكاسات الاجتماعية للسياسات الاقتصادية (2005-2010), Syrian Economic Society, Study no. 13, published on 5/10/2011. See full study on this link: [http://mafhoum.com/syr/articles\\_11/13-dib.pdf](http://mafhoum.com/syr/articles_11/13-dib.pdf)

51 Al Hasan Ashi, Did Algeria avoid the Arab Spring? هل تتجنب الجزائر الربيع العربي؟, Middle East Carnegie Centre, accessible at: <http://carnegie-mec.org/2012/05/31/ar-pub-48293>

52 Mansouri Al Zein, Economic Reform Policies Repercussions on the Poverty Level: Situation in Algeria تداعيات سياسات الإصلاح الاقتصادي على مستوى الفقر. حالة الجزائر, University of Blida. Link to the study: [www.kantakji.com/media/3956/2105](http://www.kantakji.com/media/3956/2105)

areas, directing the attention of the State, including their physical and human resources, towards them. They have done so by supporting infrastructure, providing with assistance at the expense of marginalised areas inhabited by poverty stricken people and people with limited revenues. The marginalised thus began to suffer from the lack of services and basic infrastructure. In Tunisia, for example, the disparity between urban and rural areas on the one hand, and the coastal and inner areas on the other, was very obvious in terms of employment rates. It was also obvious in terms of resources such as health, water and infrastructure.<sup>53</sup>

These policies have prompted internal migration in some countries. People have left rural areas for cities, moving from poor regions to richer. This internal migration carries several repercussions. In Syria for example, the migration from rural areas to the cities, and between cities, that is, migrating from the eastern side, “Sharqiah” to Damascus, has led to family disintegration and complete unfamiliarity with the new places. Instability and poor service have resulted in children dropping out of school. This has also placed a high pressure on the hosting cities and led to an abandonment of the agricultural areas that are now at the risk of desertification. Similarly, in Morocco the social fabric is concentrated in the urban areas.<sup>54</sup> The continuous tendency of moving to cities has led to frictions among the different social classes and heightened feelings of injustice due to disparities and lack of equal opportunities.

This unorganised migration in addition have created also the phenomenon of “slums” in many countries. Studies in Syria illustrates that slums constitutes 50% of general housing.<sup>55</sup> This phenomenon has recurred in more than one country, and has been described in Algeria as “tin housing”, Sakan al-Safih, and in Egypt, “informal housing” Ashwaiyat. Slum housing was one of the main reasons for the uprisings in 2010 in Algeria. The issue shed light on a major crisis in the country because of the mass migration to urban areas for the purposes of either fleeing terrorism, or to look for better job opportunities and living conditions. The situation resulted in unorganised slum housing and after a while, slum residents resorted to the streets in order to condemn governmental policies related to the allocation and distribution of apartments. In particular, because the policies relating to the distribution of apartments did not adopt transparent criteria. Distribution was known for being mainly governed by chaos, corruption and cronyism. All the aforementioned helped trigger popular outburst.

In Egypt, the 2004 government of Prime Minister Ahmed Nazif, known as the “government of businessmen”, saw the rise of a new political elite that was close to Gamal Mubarak, the “heir apparent” of the country. It solidified the symbol of the marriage between money and power. Likewise, in Syria, the term “new businessmen” emerged bearing political connotations and was linked to ‘the small elite of a large private sector’ that includes the country’s wealthy and powerful members having material and moral influences. This elite built their wealth after a short period of tight connection between money and power. Members of this group played key roles in both

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53 See Omar Belhadi, *La fracture sociale. Dimension spatiale de la révolution tunisienne*, Wassiti éditions, (Tunis, 2012).

54 It is possible to resort to the World Bank statistics or the High Commission for Planning of the Kingdom of Morocco on the following link: [www.hcp.ma](http://www.hcp.ma)

55 Sinan Ali Dib, *The Social Implications of Economic Policies (2005-2010)* (الانعكاسات الاجتماعية لسياسات الاقتصادية) *op.cit.*

legislative and executive State bodies as they rose in prominence on the political, economic and social level. In Libya, financial corruption was used to serve political and security despotism by means of exploiting the oil rent to allow Gadhafi to bribe his entourage, inside and outside the country. In addition to buying political allegiance, the bribes helped cover the violations the colonel was committing against his population.<sup>56</sup> When the country decided to adopt economic reform policies in 1992, corruption exacerbated, enabling the close circle of the regime to rob and seize the resources of the country. Resources were no longer limited to oil wealth only: they extended to real estate, agriculture, industry and other types of wealth that once privatised, they became exclusively for the benefit for those close to the system.<sup>57</sup>

The extent of corruption and other scourges in Algeria, such as smuggling and tax evasion, have led to the creation of a parallel economy, marginal and illegal. This economy has included drugs and arms trafficking which effectively has become a dangerous weapon able to destroy the fabric of the national economy, undermine the values of the Algerian society and pave way for wars and crises.<sup>58</sup>

Structural adjustment measures in line with the principles of neo-liberalism have had a negative impact on the lives of women. Several reasons exist such as the shrinking of social services due to the withdrawal of support by the government relating to health and education sectors. In addition, the increase of unemployment rates and the spread of informal housing, all are factors that affect women more than men because of their disadvantaged position in society. Particularly in countries with low growth rates, the mortality and disease rates of women related to reproduction functions are extremely high. The average percentage of female mortality during child birth in Arab countries is 270 in every 100,000. This percentage reaches 1000 to every 100,000<sup>59</sup>. Moreover, the Arab region has one of the lowest rates of female education, one of the highest rates for female illiteracy (50% compared to 30% for males), and female access to different stages of education. With variations between countries, the rate of female access to education is limited to three out of four, compared to four out of five for males.<sup>60</sup> In addition, Arab women's contribution to economic activities are amongst the lowest in the world. The prevailing culture privileges men in employment as they are seen as the main providers for their families, a factor which negatively impacts women.<sup>61</sup>

Field studies show that residents of informal housing areas are socially disadvantaged as they have lower rates of literacy and professional skills which limits opportunities of employment. Moreover, the percentage of female-headed households is particularly high in informal housing areas. It indicates a significant rise in divorce rates as well as marital separation and widowhood. Women residing in informal housing areas also suffer from economic and environmental hardship which

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56 See: L. Martines, "Libye: Les usages mafieux de la rente pétrolière", *Politique Africaine*, 2012, n°125, pp. 23-42

57 See: L. Martines, *The Libyan Paradox*, Horst, (London 2007).

58 Shayeb Aziraa Ben Yamina, *Democratic Transition in Algeria (Hindrances and Prospects)* (التحول الديمقراطي في الجزائر العوائق والآفاق) *Study published in the Academy for Social Studies and Humanities periodic magazine*, 8<sup>th</sup> edition, (2012) p.6.

59 *Towards the Rise of Women in the Arab World*, *The Arab Human Development Report 2005*, p. 70.

60 *Ibid.*, p. 73-74.

61 *Ibid.*, p. 83.

affect their domestic relationship and their ability to raise their children. In addition to being subject to different forms of violence many of the women do not have official documents such as birth certificates.<sup>62</sup>

The above accounts and descriptions have prompted millions to become unemployed, poor and marginalised. In search of a better life and better opportunities they have resorted to the streets once realising that they had nothing to lose and that whatever may occur to them, they will not be worse off. It is therefore not surprising that demands for jobs was the main slogan repeated by the chanting protesters in Tunisia at the start of the “Arab Spring”: “Work, Freedom, National dignity”.

### C. The popular movement

The political, social and economic reality of the majority of the countries under study reveals that the situation has reached a point of no return. This shows that a situation may erupt for seemingly trivial reasons. Hence, a sensible and objective reading of that particular time period raises certain questions, not necessarily about why these revolutions occurred. Rather, why it took such a long time for people to rebel.

It is obvious that the Arab populations reached a point of ultimate despair and frustration vis-à-vis their circumstances, losing all hope for a better future. They were not able to cope with the ever-increasing exacerbation of reality. They could not do anything to change it because of the strong control of the ruling regime: the merciless grip of security forces on the country on the one hand, and the capacity of a weak opposition – if existent at all – to create a change, on the other. For the population, revolutions were improbable dreams. Succeeding with the overthrow of the regimes would require a miracle. In order for the dream to become a reality and the miracle to happen, an incident of an exceptional nature was needed. One that could disturb the balance of power and to set new rules. One such incident was that of Mohamad Bou Azizi’s in Tunisia.<sup>63</sup> It triggered subsequent events and took the Arab region by storm. The symbolic importance of Mohamad Bou Azizi lies in the fact that it restored people’s hope and confidence in their ability to make a change. By joining the cause of a victim and rallying peacefully in the city squares and streets in his support was although simple, but nonetheless an act. In a matter of days and weeks, the act enabled the ousting of despotic regimes that had ruled for decades on end. The same incident was repeated in Egypt

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62 *Ibid.*, p. 113-114.

63 *As previously mentioned, the many social and economic crises led to the increase in unemployment especially among the youth and in the internal regions. This encouraged many young women and men to resort to individual solutions to provide income for themselves and their families by practicing irregular trade activities, which, in addition to being vulnerable, exposed them to police targeting. This is what exactly happened with Mohamad Bouazizi from Sidi Bouzid in Midwest Tunisia, one of the most economically and socially marginalized regions and the weakest in infrastructure and basic utilities. The municipal police confiscated Bouazizi’s cart which he used to sell fruits and vegetables; it was his sole source of income. On the 17th of December 2010, he set himself on fire and passed away after a few days. This event constituted the beginning of the mass protests.*

with Khaled Said.<sup>64</sup> The incident shed light on the violence and the humiliating practices as well as the extra-judicial attacks committed by the police against its citizens. This was the direct reason for participation in the January 25<sup>th</sup>, 2011 demonstrations, also known as the National Police Day that marked the start of the Egyptian revolution.

These events broke the wall of fear not only in Tunisia and Egypt, but around the Arab region.<sup>65</sup> Fear had been predominant for decades and was one of the most efficient tools of the regimes. It was a weapon that was very successful in restraining and subjecting, eliminating any possibility or attempt, however simple, to refuse and rebel. “No” and “opposition” were incriminating words considered as taboo. Then came the Bouazizi event that broke this taboo with thousands of people going to the streets and loudly exclaiming “no”. They protested, calling for demonstrations in the squares and public spaces in order to have their requests to topple the long-standing repressive and humiliating regimes heard.

### **The response of the authorities**

Arab regimes adopted the same strategy in dealing with the popular protests in their respective countries. It was based on a carrot-and-stick principle, consisting of intimidation on the one hand, and enticing on the other hand. Intimidation was always used via security solutions in the beginning of the popular unrests. If intimidation failed, the regimes resorted to introducing a bundle of economic and social incentives. In the majority of Arab countries where protests unravelled, intimidation was used as a first option by the regimes. The States used strict measures to repress protesters, detaining and firing live bullets amongst other forms of violence. Despite the disparity in the numbers of victims (dead, injured, detained and disappeared) among the countries, the cause for the unrest as told by the regimes is similar across the “Arab Spring” States. It is a semi-official description of the causes repeated by all the studied regimes. The version claims that the regime was not at all responsible for what happened, and that the violence was perpetrated by other parties as a result of a wider international plot. Plotters smuggled arms into the country and instigated the protests and attacks against the security apparatus. The security forces, keen on protecting the people and

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64 Khaled Saeed was an Egyptian 28 years old young man who died because of the brutal beating he was subjected to by the Egyptian police on June 6<sup>th</sup>, 2010. Photos of Khaled Saeed's maimed face swamped the internet and attracted the sympathy of wide sectors of citizens. Within days, a Facebook page entitled “We are all Khaled Saeed”, joined by thousands, called for silent sit-ins and multiple protest events against the violence of the security forces. The page called people to go to the streets on January 25<sup>th</sup>, 2011, National Police Day, to protest against the violence of policemen and to request the resignation of the Minister of Interior.

65 Testimonials of many of those who took part in the Tunisian revolution, who were interviewed for the purposes of this study, reveal how they gathered their courage and strength to break the wall of fear and take their revolution till the end. Two women who were among demonstrators - one of them a member of the High Commission for the Realisation of the Revolutionary Goals, Democratic Transition, and Political Reform and the other a member of the National Constituent Assembly - said: “Before Ben Ali was ousted, they no longer feared the retaliation of the police when they went to the streets, despite the violence that was practiced against them and knowing that some were shot dead. It is because they came to realize that matters had reached a point of no return and that the protests had attracted large masses that they felt a sense of solidarity and force in numbers.”

restoring security and order pursued these infiltrators, takfirists and criminal groups that were firing at both protesters and security forces in order to spread violence in the country.

When security solutions failed, the regimes attempted to provide for an array of economic and political incentives. At an early stage of the revolution in Syria, the regime decided to increase government subsidies on diesel oil, establish a social security fund designed to provide cash assistance to families in need, and provide further assistance to areas that suffered the worst cases of drought in recent years. It later decided to increase the salaries of civil servants, find the necessary funding to increase job opportunities, as well as to provide for necessary resources either to create new job opportunities for the unemployed youth or to regularise temporary staff.

In Jordan, the government decided to appease public anger by reducing taxes, gas price and basic goods.<sup>66</sup> In Algeria, the government suspended all taxes on sugar and vegetable oil for eight months, and launched a series of economic and livelihood related reforms. The government announced a distribution of the country's considerable revenues from oil and gas to major projects relating to housing, the alleviation of unemployment's burden on young people, the allocation of more funds for food support, and the increase of wages for civil servants. The distribution would also provide young businessmen with interest-free loans, grant them tax breaks to start their businesses, as well as allocating a share of local public contracts.<sup>67</sup>

There have also been political and legal incentives. These have included a number of measures related to the abolishment of the emergency law (Syria and Algeria)<sup>68</sup>; establishing a national dialogue committee (Syria and Jordan)<sup>69</sup> and promulgating new laws on political parties, associations, and assemblies. In the majority of countries under study, special bodies were created and tasked with revising existing constitutions<sup>70</sup> for the purpose of fully or partially amending them.<sup>71</sup>

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66 On January 12<sup>th</sup>, 2011, the Jordanian government reduced the prices of oil of 5%, sugar and rice 10%, reduced taxes and set the ceiling for any price raise on food items.

67 Al Hasan Ashi, *Did Algeria avoid the Arab Spring?* Op. cit.

68 On January 22<sup>nd</sup>, 2011, Algeria decided to lift the emergency law that had been imposed on the country for 19 years, and on April 21<sup>st</sup>, 2011, the Syrian President issued many decrees to put an end to the emergency law in place in the country since 1963, to cancel the Higher Security Court, and to organise the right to peaceful demonstration.

69 In March 2011 the Jordanian government, upon the King's request, formed a committee for National Dialogue presided by Taher el Masri President of the Senate, and made of 50 members from the different currents.

70 On March 9<sup>th</sup>, 2011, King Mohammed VI of Morocco declared in his first speech the formation of a committee to amend the constitution and that the coming constitution would be based on seven key elements: separation of powers, keeping the Islam constants, the *Imarat el Mou'minin* (Kingdom of Believers), a better place for Amazigh, consecrating the plurality of the unified Moroccan identity, enlarging individual and community liberties, guaranteeing the practice of liberties and promoting human rights. On April 2011, the Jordanian Royal Kingdom announced that King Abdallah II had formed a Royal committee and tasked it with reviewing the constitution and undertaking the convenient constitutional amendments for the present and future of Jordan.

71 On April 15<sup>th</sup>, 2011, the President of Algeria announced that he would ask the parliament to make some political reforms like revisiting the electoral law in order to promote democracy. Furthermore, he would be working on the amendment of the State constitution "to promote parliamentary democracy". On January 12<sup>th</sup>, 2012, the Algerian President issued organic laws related to political parties along with laws on elections.

The rights of women were completely ignored in most of the initiatives taken by the governments in the response to the demands for change, despite the fact that women were key players in the popular protests. There was one rare instance where demands of women were responded to, even if not yet materialized. It related to a longstanding demand made by Syrian women in relation to the country's law of nationality. In 2011, the Syrian Prime Minister issued a decree to form a committee in order to study and modify the nationality law. The purpose was to enable Syrian women married to foreigners to pass on their nationality to their children.<sup>72</sup> Although the decree specifies that the committee must send its proposal to the prime minister within a week, six years have passed and nothing been issued by the committee.

The efficiency and influence of measures undertaken by the governments differed from one country to another. In some countries, the revolutions succeeded in toppling the regimes, as in the case of Tunisia, Egypt and Libya. In other countries the aforementioned measures, coupled with other factors, succeeded in putting an end to the "Arab Spring" protests as in the case of Jordan, Algeria and Morocco. Syria however, remains the painful exception. The country has plunged into a bloody war with regional and international aspects known to everyone.

Reasons and assessments may vary, and they differ with regards to the efficiency of the response of the authorities or their failure in dealing with popular protest movements. In Algeria for example, the different measures aimed at calming down public opinion and relieving existing tensions, prevented the country from entering into the "Arab Spring". Whether considered as negative or positive, the swift reaction of the government as well as its prompt answer to economic and social demands helped the country in avoiding the protests.<sup>73</sup> In addition, the looming shadow of the Algerian civil war in the 1990s was still in people's minds. Fears of another period of violence and insecurity prevented many Algerians from seeking radical change, despite their economic and social hardships. Despite the increase of disputes and the intensifying of protests and clashes, the country's previous experience of the civil war was considered as a nightmare by the majority of Algerians who neither wanted to return to, nor to remember.<sup>74</sup> The sense of reluctance increased because of the chaotic transition processes that prevailed in the neighbouring countries undergoing the "Arab Spring": Tunisia, Egypt and Libya as well as the situation in Syria.<sup>75</sup>

Several female dignitaries that were interviewed in Jordan for this study explained that the government was able to continue and safeguard its powers thanks to the wisdom of the King in dealing with the protests. He resorted to "soft" security measures and avoided bloody clashes. In addition, pre-emptive measures were adopted such as the reduction of prices of some basic commodities and taxes. Committees were also formed, specifically the formation of a committee for national dialogue and a royal committee for the amendment of the constitution. Others however have casted doubt on the soft nature of the security measures claimed by the Kingdom. They pointed to certain repressive

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72 Syrian Decree No. 9960 dated 10/7/2011.

73 L. B., Mghar, N., S., Ahmad, *Protest Movements in Algeria, Reality and Prospects* الواقع والأفاق الجزائر. الحركات الاحتجاجية في الجزائر. p. 326.

74 Wafaa Marzouki, *Reading on the stumbled path of "Arab Spring" in Algeria*. الجزائر. الربيع العربي في الجزائر. Op. cit. Page 305.

75 Al Hasan Ashi. *Did Algeria avoid the Arab Spring?* Op. cit.

measures that the authorities took in order to halt the popular movement in its early stages. These analysts have highlighted the policies adopted by the Jordanian government at the period when individuals were prosecuted and the accusation made by the authorities when public figures crossed “red lines”. The authorities in addition, held a tight grip on media by modifying the relevant laws of the press and publication. This was in order to have the capacity to censor websites and news reporting on the situation of the country. The authorities also exercised control over the formation of associations and political parties under the law relating to associations issued in 2009 and the law regulating parties issued in 2015. The long tradition of authoritarianism and lack of accountability was furthermore highlighted by the reintroduction of capital punishment which had been suspended for eight years.<sup>76</sup>

The experiences of the countries above illustrate the precedent laid by Tunisia. It inspired Arab populations and encouraged them to widen the space of popular protests. The situation in Syria however, shows the opposite. It serves as a warning to the Arab populations and the risks of protests. Some parties, States and individuals have used Syria as an example and used fear-mongering in order to avoid a spill-over of the Syrian crisis to their respective countries.

## The role of civil society

Examining the course of Arab protests confirms that forces of civil society cannot possibly emerge out of thin air. The role of the civil society during the “Arab Spring” can be assessed by looking at the period prior to the revolutions. The nature of their role can be divided into four categories: active and efficient; limited; emerging, and non-existent.

### - Active and efficient role

In countries where the civil society had some freedom, it assumed a very effective role in setting the stage for revolutions and controlling the ensuing transitions. This in particular applies to Tunisia and Egypt in which the civil society, including the opposition parties and associations, affirmed their presence on the ground despite facing legal and security harassments and restrictions. Its influence became especially clear when the revolutions erupted. The April 6 movement in Egypt assumed a leadership role in the January 25<sup>th</sup>, 2011 revolution.<sup>77</sup> Meanwhile, the Kefaya organisation officially known as the “National Movement for Change” paved the way for the Egyptian revolution.<sup>78</sup>

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76 Ziad Abu-Rish, “Doubling Down Jordan: Six years into the Arab Uprising”, *Jadaliyya*, February 16<sup>th</sup>, 2017.

77 Egyptian political opposition movement that surfaced after the general strike held on April 6<sup>th</sup>, 2008 upon the invitation of the Mahalla workers. The majority of the movement members are young women and men who don't belong to any other political current or party. The movement was amongst the first to take the initiative of calling for demonstrations on January 25<sup>th</sup>, 2011.

78 It is a popular gathering encompassing male and female citizens from Egypt for the various political forces in the country; it surfaced in 2004 when 300 intellectuals and public figures from all the political realm drafted a constituent document requiring a real political change, putting an end to economic grievances and corruption under the slogan “Kifaya” (Enough) all over the protest stations. Since the start, the movement focused on refusing to renew Mubarak's mandate for the 5<sup>th</sup> time, and refusing the political, legislative and media manoeuvres aiming at laying the ground for his son Jamal Mubarak. They raised the slogan: No to the extension of the mandate, no to passing power to sons. Despite it being small in number, it succeeded in stirring the still waters of the political scene and inspired the frustrated Egyptians to rise against the deteriorating situation, the spread of corruption and the harsh grip of security forces.

The best example of the role of civil society is seen in Tunisia, where the trade unions and the Bar Association consisting of both women and men, played an important role in the beginning of the protests. They organised and framed the demonstrations and protests in the larger cities. Their role continued throughout the transitional period, where the presence of the civil society was obvious and influential in the course of events. They played a role in the Higher Authority for the Realisation of the Objectives of the Revolution, Political Reform, and Democratic Transition which represented the embryo of a parliament. Although the authority was unelected, it was consensually appointed by the most important political parties and the most active national CSOs since the revolution.<sup>79</sup> The authority was based on two pillars: an Experts' Committee and a Council representing the major political parties, national associations and organisations.<sup>80</sup>

These were consensually chosen by the different actors and appointed by the Prime Minister. The presence of women in the High Commission was striking, be it in the Experts' Committee or the Council. It is noteworthy that the importance of their presence was not because of the high proportion of women.<sup>81</sup> Rather, it related to their experience and the nature of their backgrounds.<sup>82</sup> The women representing political parties were not as well represented and influential in the High Commission compared to those representing the civil society or prominent public figures. Moreover, and as previously noted, the Tunisian civil society, represented by the Quartet that sponsored the dialogue, played an important consensus building role when the crisis climaxed between the alliance and the opposition.

### - Limited role

The limited role applies to countries such as Morocco, Algeria, and Jordan where their respective authorities had allowed for a restricted role for political parties and CSOs. The limited role persisted throughout the protests in these countries. In Jordan for instance, labour unions participated in the popular movement by taking part in the protests. Jordanian feminist movements had a lack of unity amongst them. They failed to form a strong lobby in order to pressure the different political sides in supporting their demands. This led to the complete absence of women's rights from the agendas of parties and popular movements. They thus remained dependent on the balance of political forces.

In Morocco, protest movements gradually emerged. At the onset of the protests, the movement of February 20th slowly began to contribute to the mobilisation of demonstrators which illustrated the

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79 The content and tasks monitored can be found on: <http://www.turess.com/alchourouk/181552>

80 The Council encompassed male and female representatives of twelve political parties, nineteen national associations and organizations, twelve regions and 72 National figures known for their integrity and struggles for democracy and human rights under Bourguiba and Ben Ali.

81 The High Commission included 35 women out of 155 members.

82 Notwithstanding the women representing political parties, most women in the High Commission came from long-standing women's organizations such as the Tunisian Association of Democratic Women (Saida Garrach), the Association of Women for Research and Development (Radhia Belhaj Zekri), law graduates (Khadija Cherif and Latifa Lakhdar who was elected by the members of the Council as Vice Chair), unionists (the late Najiba Hamrouni), art figures (Jelila Bakkar and Zeinab Farhat). The common denominator among all these women is their position in the opposition during the Bourguiba and the Ben Ali rules and their fight for women's rights.

role of CSOs.<sup>83</sup> Demonstrations were organised all across the Moroccan cities in response to the youth's calls on Facebook and also found support from political forces in demanding democracy, political reform and the fight against corruption.

The Algerian experience by contrast cast light on the very limited role of the CSOs and political parties in the protest movement of the country.<sup>84</sup>

Their ineffectiveness became obvious at the onset of the protest, despite the attempts of a handful of them in launching initiatives such as the calls made by the Algerian League for the Defence of Human Rights (LADDH) and groups of trade unions to hold consultative meetings on January 21<sup>st</sup>, 2011. They also called for demonstrations in the streets of the capital rallying for culture and democracy. In order to pressure political authorities and mobilise more political and social forces, organisers of demonstrations established a new body under the name of National Coordination Committee for Change and Democracy (NCCCD), which rallied opposition parties, independent trade unions, and various civil society representatives. They however failed to gather any supporters.<sup>85</sup> The role of women in this process was restricted to participation in the initiatives made by CSOs, such as organisations aimed at defending the rights of women to establish the NCCCD. During the demonstrations, women participated alongside men as leaders, organisers and demonstrators. Along with men, they were arrested and violently assaulted by security forces. Some women were specifically targeted for their political activities and commitment.<sup>86</sup> It is obvious that their absence stemmed from the dire state of political parties and civil society in Algeria because of periods of terror practices and restrictions imposed by the State.

### - Emerging role

The emerging role of CSOs is exemplified by Syria, where civil society was non-existent for decades. The role of civil society nonetheless emerged during the very first days of the popular protests, when 'coordination committees' were established. The objective was from the beginning to secure neighbourhoods and assist the injured. Once the situation advanced, the committees took a strategic political turn by expanding the tasks of the coordination committees in various neighbourhoods. Subsequently, political and legal activists joined these coordination committees<sup>87</sup>. For a limited period of time, the number of coordination committees increased to cover each neighbourhood.

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83 A Moroccan youth movement encompassing young activists calling for reforms in Morocco. It appeared after the 2011 popular revolution in Tunisia, where the Moroccan youth sent a call, via a short video, to demonstrate on February 20<sup>th</sup>, 2011. Many recordings followed, along with calls from youths. Thousands of Moroccans, both women and men, joined the movement. This was the start of the February 20<sup>th</sup> Movement composed of three groups: Freedom and Democracy Now, People Want Change and For Dignity, Uprising Is the Solution.

84 Abdel Naser Jabi, *Protest Movements in Algeria* الحركات الاحتجاجية في الجزائر (January 2011). Arab Centre for Research and Policy Studies. Series (Evaluate a situation), Doha- Qatar. January 2011, p. 11.

85 Najj Safir. 'Political developments in Algeria in the context of ongoing changes in the Arab World' في الجزائر في التطورات الوضع السياسي في الجزائر في 'Arab Spring. Revolutions to Free from Tyranny. Case Studies, Arab Network for the Study of Democratic. First Arabic edition. July 2013. Pages 370-371.

86 Arab Revolutions. Which spring for women? International Federation for Human Rights. March 2012, p. 63.

87 Muhamad Jamal Barout, *Last Decade in the History of Syria: The Dialectic of Stagnation and Reform* (الجمود والإصلاح), Arab Centre for Research and Policy Studies, Doha, Qatar, 1<sup>st</sup> Edition, Beirut 2012, pp. 360 and beyond.

They were later placed under the auspices of the Syrian Revolution Coordinators' Union that unified their political discourse and organised their fieldwork. Since its inception in May 2011, the Union gathered 80 coordination committees and became the biggest organising body of the Syrian revolutionary movement. It formed 80% of the Syrian Revolution General Commission having representatives from the Coordination Committees who undertook tasks of providing logistical support and organising communication.

Throughout this period, the participation of women was equal to that of men. Women undertook multiple roles and led entire protests either with the help of men or on their own. In some areas, they organised females-only protests, despite the prevailing of the masculine culture and patriarchy. For example, during the protests in some conservative regions, women were either omitted entirely from participating, or were surrounded by a number of male protestors marched behind them for protection. Female protesters however, maintained their rebellious spirit, rejecting protection and holding on to their right to revolt.<sup>88</sup> In parallel, female revolutionaries helped in establishing coordination committees, even if their chances to reach decision-making positions differed from each place. Female-only coordination committees were created, some of a secular democratic nature, and others were Islam-oriented.<sup>89</sup> A subsequent evaluation of the period reveals that although female rebels participated in the revolution on a large scale, they were still excluded from decision-making positions such as the representation in coordination committees. If they were to reach decision-making positions in some committees, it was owed to their civil activism before the revolution or the acceptance and encouragement of the civil society of holding such a role.<sup>90</sup>

### - Non-existent role

In Libya, civil society and political parties have played no role, firstly because of their traditional absence from the political scene and because of the violence of the totalitarian regime that was in power. Secondly, the war that raged throughout the country made it impossible for civil society and political parties to act.

In conclusion, the problem that surfaced in a number of the countries was that often women did not receive the status they deserved, something that they managed to secure during the course of the revolution. In fact, they were often at the forefront of protests in many countries during the revolution alongside, and on equal footing with men, without the men inciting reservations and rejection of their presence and activity. However, as soon as the revolution ended or began to dwindle, and a sense of normal political life returned, the rhetoric on the traditional role of women and the need for them to return to their stereotypical place re-emerged. This can be particularly noticed in the exclusion of women from the political and electoral scene in the post-revolution eras in several countries. It indicates a politically opportunistic behaviour on behalf of men. They only accepted an equal presence of women when in dire need of their support. They

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88 Lama Kannout, *The political participation of Syrian women, between the center and the margin* بين المتن المشاركة السياسية للمرأة السورية، بين المتن والهامش، Syrian Feminist Lobby Publishers, Euromed Feminist Initiative IFE-EFI, 1st edition 2017, p. 31.

89 *Ibid.*, p.33.

90 *Ibid.*, pp. 36-37.

disregarded their traditional role and functions along with all of the related religious and social barriers, only for the stereotypes to later resurface once the support of women was no longer needed.

Effective inclusion of women requires swift and serious actions such as consolidating and enshrining rights and achievements in law, connecting progressive women and men to form a support group for women's rights. The latter would be capable of standing against any retrograde calls targeting women, which have emerged in many countries in the aftermath of the revolution.<sup>91</sup>

#### D. The constitution drafting process

The States under study differ in their constitutional, legal and governance rules. Some are Republic, others Jamahiriya or Kingdoms. Differences may seem to be countless but at the constitutional level it is the similarities that are numerous. In particular, the subsequent procedures of constitutional documents that were adopted in the pre- and post- "Arab Spring" era.

### The constitutional heritage

Some Arab countries have a well-entrenched constitutional heritage. Tunisia constitutional heritage dates back to the reform movement in the 19th century initiated by the promulgation of the 1857 Fundamental Pact, and ended with the issuance of the constitution of 1861. Likewise, Egypt have texts and documents of a quasi-constitutional nature dating back to the first half of the 19<sup>th</sup> century. The first Iraqi constitution was issued in 1925, the Lebanese constitution, still in place today, was enacted in 1926 and the first constitutional draft of Syria was achieved in 1928. Other States acquired constitutions following their independence, that is, in the second half of the 20<sup>th</sup> century such as the constitutions of Libya (1951), Jordan (1952), Morocco (1962), and Algeria (1963).

With the exception of some amendments throughout the years, a survey of the constitutional history of all the countries under study shows that some countries had constitutional stability, meaning that a total constitutional change never happened. The Lebanese constitution for instance, have remained unchanged since 1926. This also applies in Jordan (1952) and Tunisia (1959).

Other countries have had a series of consecutive constitutions. Egypt, for example, had the 1923 constitution, the 1930 draft constitution, and subsequent ones (1954, 1956, 1958, 1964 and 1971). The 1971 version remained in force until 2011. Syria had its draft constitution in 1928 which was implemented but later suspended several times. Subsequently, the country has had the draft constitution of 1949, constitutions of 1950, 1953, 1958 and 1961, and the interim constitutions of 1964, 1969, 1971, 1973. The 1973 constitution remained in force until 2012. Algeria had its first post-independence constitution in 1963, then four others that were amended five times, amounting to at least nine constitutional processes prior to 2011.

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<sup>91</sup> For instance, Mr. Mustapha Abdel Jalil, President of the Libyan National Transitional Council, declared in his speech of victory that he will be cancelling the law prohibiting polygamy.

What is worth noting in this context is that constitutional stability cannot be considered in itself an achievement, nor can the successive amendments be considered as flexibility. Many constitutions remained in force because it was impossible to draft an alternative constitution. This is the case of Lebanon for reasons of political discords and sectarian divisions. In Jordan the constitution consecrates royal rules that cannot be touched. Other examples include despotic regimes that do not allow any change or response to requests for constitutional reform, as was the case of the Tunisian constitution under Bourguiba and Ben Ali.

In countries with successive constitutions such as in Egypt, Syria, Iraq, and Algeria, replacing and amending constitutions has been an easy task. This is either because of revolutions and military coups or because of the nature of the ruling single-party regimes. In fact, the political leaderships of the single-party regimes have issued constitutions single-handedly, as they would with any other law, without recognising the importance of the constitutional document which they amend or adopt.

This issue surfaced in particular by the “Arab Spring” constitutions. Several countries faced the dilemma of choosing between a complete rupture from the former constitutional heritage and the setting out on a new revolutionary constitutional course. When it was announced that President Ben Ali had fled, the Tunisian political institutions were at a loss as to how to manage the void that was left. They oscillated between leaving matters in the hands of the revolution or institutionalising the transitional process; that is, either staying within the current framework of constitutional legitimacy or establishing a new constitutional legitimacy more in line with the revolution in both content and form. A similar discussion took place in Egypt about whether to break with the constitutional heritage since it represented an authoritarian political system, or to abide by the heritage and introduce necessary amendments. Amongst the advocates for the principle of a break or rupture with the constitutional heritage, were the revolutionary youth and many sectors within the Egyptian society who dreamt of effecting a radical change in the political system.

The paradox of constitutional experiences in Tunisia, Egypt, and Libya reveals that this push was often destined to completely quell the objectives of the revolutions, as opposed to realising them. Advocates of political Islam in particular, called for a complete rupture with the former constitutional heritage. The call was not aimed at ridding their countries of constitutional texts which consecrated despotism, (counter-democracy, the oppression of human rights, violation of freedoms, denial of the rights to gender equality) and the justification of their deliberate targeting and undermining of values, status and safety. Rather, the rupture was to some extent, promoted in order to discard the few constitutional texts upholding the civil State and preserving the rights of women. This would allow them to achieve their explicit goal of Islamising the State by virtue of the constitution and to impose their limited vision and particular convictions, effectively disregarding intellectual, political, and religious pluralism of their societies. This occurred during the drafting of the Tunisian constitution, when the draft for Article 28 was issued. The Article disregarded completely the already existent principle of gender equality by replacing it with an ambiguous concept of partnership which limited women to their traditional family role. The draft was not adopted in the

end.<sup>92</sup> Likewise, in his first statement, the President of the LTC, Mustafa Abdel Jalil said that he would establish an Islamic regime and abolish all laws contradicting the Islamic Sharia, including first and foremost the law restricting the right to polygamy.

Previous experiences reveal that women have fought hard to maintain in post-revolution constitutions some of their acquired rights, formerly accounted for in pre-revolution constitutions. Religious political forces have exploited the slogan of the revolution and the enthusiasm of rebels along with the ordeals of oppression and exclusion they went through, in order to impose their own political and religious agenda, abolishing any civil and secular references in the constitutions. This applies to the attempt to pass Article 28 in Tunisia, as well as the suggestion to repeal the law that prohibited polygamy in Libya.

It also applies to Egypt in 2012 when the Constituent Assembly with the Islamist majority attempted to fast track the islamisation of both State and society by using constitutional texts. Members of the Islamist groups expressed their intention to modify the Personal Status Laws and to review all recent amendments on the pretext that these amendments did not conform with Sharia: they reflected the world view of the corrupt ruling elite.<sup>93</sup>

These forces have harnessed their human and financial capacities in the spending, recruitment and organisation in order to impose their own agenda, on top of which is the oppression of women. This is very dangerous and demands more care with regards to the complete and arbitrary detachment from previous constitutions. Because what should be offered in the new constitutions, have to strengthen, safeguard and increase the achievements of the past. This is far from what have occurred in some of the “Arab Spring” countries, where women have had to fight in order to safeguard the rights that they had in the past.

## Constitution drafting committees

The constitutional heritage of the Arab countries under study reveal that the most democratic means were rarely used in the drafting of constitutions.<sup>94</sup> This would entail an elected constituent assembly that could present its work to the people for their voting. The majority of the previous constitutions were drafted by committees appointed by a military leader who reached power through a coup, a King inheriting the throne, Military Councils or political parties. The role of citizens was limited to approving the constitution through a referendum, whose results were predetermined. In some cases, a formal referendum was even abandoned and consequently, the constitution would be considered as coming in to force upon its issuance by the governing body, be it military or civil, and irrespective of whether the State was a Kingdom, a Republic or a Gadhafi-style Jamahiriya.

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92 Article 28: “The State guarantees the protection of women’s rights and the support of their gains as partners of men in building the nation. Women play a complementary role inside the family and the State guarantees equal opportunities between women and men in carrying the different responsibilities. The State guarantees the elimination of all forms of violence against women.”

93 Adel Amer, “The Corrupt Laws for Egyptian Families,” القوانين الفاسدة للأسرة المصرية in *Diwan al-Arab*. Sunday June 3<sup>rd</sup>, 2012, Accessible at: [http://www.diwanalarab.com/spip.php?page=article&id\\_article=33208](http://www.diwanalarab.com/spip.php?page=article&id_article=33208)

94 See S., Suteu & I., Draji, eds. B., Jonsson & M., Alrahabi. *ABC for a Gender Sensitive Constitution*, Paris, 2016

This study found that the Libyan constitution of 1951 was drafted by a National Assembly appointed by the King, while the Egyptian 1952 constitution was drafted by a committee appointed by 50 members. The King of Morocco appointed a committee that drafted the first constitution of the Kingdom in 1962 as well as the committee that drafted the second constitution of 1970. In Algeria, the single ruling party, the Political Bureau took upon itself the task of drafting the first constitution in 1963. The ruling Ba’ath party in Syria issued several of the country’s interim constitutions in 1964, 1969 and 1971. A quick reading of the constitutional track followed by countries in the post- “Arab Spring”, reveals that two approaches were used in issuing or amending the constitutions. The first refers to electing bodies, meaning that the new constitutions were drafted by elected committees, as in the cases of Tunisia, Libya, Egypt and Iraq. The second refers to appointing bodies. These were drafting committees directly appointed by the Governor, the King or the President, as was the case in Syria, Egypt, Algeria, Jordan and Morocco.

**Table 1. Status of the constitutional committees and bodies**

State	Year	Elected/Appointed	Formation
Iraq	2005	Elected	On January 30 <sup>th</sup> , 2005, the Transitional National Assembly (or the interim Iraqi parliament) was tasked with drafting the permanent constitution of Iraq. The Assembly formed a Drafting Committee composed of 55 members.
Tunisia	2011	Elected	In Tunisia, article 1 of Decree no. 14, dated March 23 <sup>rd</sup> , 2011, regarding the temporary regulation of public prerogatives, provided for the drafting of a new constitution for the State through “a national Constituent Assembly elected with universal, free, direct vote”; the elections took place on October 23 <sup>rd</sup> , 2011.
Morocco	2011	Appointed	Consequent to the King’s speech on March 9 <sup>th</sup> , 2011, a Royal Committee was appointed by the King and tasked with the preparation of a constitutional draft that would be voted on in a popular referendum.
Syria	2011	Appointed	In Syria, the President issued Republican Decision No. 33 on October 15 <sup>th</sup> , in order to form a National Committee to prepare a draft constitution for the Syrian Arab Republic in preparation for its approval according to constitutional rules.
Jordan	2011	Appointed	In Jordan, the King formed on April 26 <sup>th</sup> , 2011 a Royal Commission tasked with reviewing the constitution and suggesting constitutional amendments.
Libya	2012	Elected	In Libya, the third amendment of the interim constitutional declaration was issued on July 5 <sup>th</sup> , 2012, stating expressly that the members of the constitution drafting committee would be elected through general direct elections; this is what happened on July 7 <sup>th</sup> , 2012.
Egypt	2012	Elected	For the 2012 Egyptian constitution, a Drafting Committee was elected by other elected Councils, the National Assembly and the Shura Council on March 24 <sup>th</sup> , 2012. Soon, it was dissolved by the administrative court on April 10 <sup>th</sup> , 2012 to elect a second Constituent Assembly on June 13 <sup>th</sup> , 2012.
Egypt	2014	Appointed	In Egypt, a Committee of 50 members was appointed to draft the 2014 constitution, by virtue of the Interim President’s decision.
Algeria	2013	Appointed	In Algeria, a competent five-members’ Committee was appointed by the President himself on April 7 <sup>th</sup> , 2013 to amend the constitution.

Elections are doubtlessly the most democratic means to represent the will of the people, provided that the necessary political, legal, security and logistical guarantees are ensured. Elections require calm, security, stability and fair electoral laws for everyone, including women. They also require an environment that allows for the spreading of awareness and the dealing with decades of negativity, exclusion and intimidation. The election processes of constitutional assemblies in the aftermath of the “Arab Spring” leave much to be desired and require a vigilant re-evaluation. This would not necessarily lead to a total abandonment of principles relating to democratic elections.

In many instances, ballots resulted in the opposite of what demonstrators wanted. The problem was not in the principle of elections itself, but in the conditions surrounding the elections, and the laws regulating the election process. More difficulties were caused by the limited capacity of political groups participating in the elections. Specifically, the capacity to raise funds, mobilise and to manage successful campaigns. There was moreover the added challenge of religious exploitation by organised groups who exerted their influence on voters on the one hand, and intimidated the opposition on the other.

We should not underestimate the limited participation in the electoral process following the revolutions.<sup>95</sup> A number of reasons were behind this, such as the chronic apathy vis-à-vis political processes, the deterioration in the security situation in several countries, political divisions, and the incitement of hatred which, in one instance led to the assassination of Mr. Mohammad Brahmi, member of the Tunisian NCA. He was killed on July 25<sup>th</sup>, 2013 in front of his own house.

**Table 2. The percentage of women and their representation in the drafting committees or constitution amendment committees and commissions.**

State	Mechanism	Total number of members	Number of females	% of female representation
Tunisia	Elections	217	58	29%
Morocco	Appointment	19	5	27%
Algeria	Appointment	5	1	20%
Iraq	Elections	55	9	17%
Syria	Appointment	27	3	11%
Egypt (2014 constitution)	Elections	50	5	10%
Libya	Elections	60	6	10%
Egypt (2012 constitution)	Elections	100	7	7%
Jordan	Appointment	10	0	0%

95 For instance, the percentage of participation to the NCA elections in Tunisia in October 23<sup>rd</sup>, 2011 was 49% only, a weak percentage if we take into account that these are first free democratic elections in the country since independence and that these were the elections crowning the revolution. For further details on the elections, please refer to the official NCA election website: <http://www.isie.tn>

The figures in Table 2 show that the highest female representation was found in Tunisia, with 29%, achieved through elections. The lowest were in Jordan, 0%, even though the constitution drafting body was appointed by the King.<sup>96</sup>

In all cases, the above percentages reflect an extremely weak presence of women. With the exclusion of the Iraqi constitution drafting experience, which took place prior to the “Arab Spring”, the average percentage of female representation in eight constitution-related processes carried out after the “Arab Spring” revolutions only reached 14.25%. This is highly insufficient as it neither reflects women’s right to equality, nor does it acknowledge their role and sacrifices before, during, and after the “Arab Spring” revolutions. To justify women’s weak representation, decision-makers sometimes used the pretext that some Arab communities, for different cultural, social and religious reasons, remain very traditional, thus avoiding to elect women. They place blame on the lack of community awareness and the implication is that the society is neither accepting nor ready to elect women with fair representation. This does not reflect what actually happened, because even when the committee members were appointed by State leaders (not by the grassroots), female representation in these bodies was limited in many cases: Egypt 10%, Syria 11%, Algeria 20%, Morocco 27%. In other cases, they were non-existent as was the case in Jordan.

The above shows that the lack of community awareness, even if correct, includes both those who govern and those who are governed. Even in cases where quotas were adopted to ensure women were represented, the percentage was low from the start, as was the case in Libya, where a 10% quota was adopted. In Tunisia, although the electoral decree demanded equal participation and rotation among women and men on electoral lists, the decree was manipulated. The results brought only 58 women out of a total of 217 available seats, that is, at a rate of 29%. Women may also have been disregarded as in the Iraqi case. In the election outcomes for the Interim National Assembly which was the body entrusted with drafting the permanent constitution for Iraq women won 31% of the seats, thanks to an electoral law that provided for a minimum quota of 25% seats for women. Afterwards, the Interim National Assembly formed a constitution drafting committee composed of 55 members including nine women only. Although women’s groups in Iraq had sought to ensure the representation of women by 25% in the Committee to reflect their representation in the National Assembly, their attempts were doomed to fail.

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96 Women tried to rectify this and alleviate its expected repercussions; thus, the female elites joined their efforts together and assigned a committee of three women to follow up on the royal commission’s works and communicate with its members. The women’s commission looked into the constitutions of Arab and Islamic countries, and agreed on adding the word ‘gender’ to the first paragraph of article 6 (mentioning in its first paragraph that Jordanians are equal before the law with no discrimination among them in rights and duties even if they differ in race, language and religion), so that gender equality is established. All the parties, including the King, agreed on the amendment proposed by the commission. But at the last minute, this demand was discarded and the Royal Commission sent its report to the King without adding the word ‘gender’ to article 6. The First Secretary of the Jordanian People’s Democratic Party (HASHD), who also is a former MP and one of the three women that communicated with the Royal Commission, in her assessment of this experience, indicated that the error committed was that these elite women “were satisfied with the high-level effort and did not invest in the women’s grassroots movement in order to demand this article’s amendment, and then it was what it was!”

See Abla Abu Elbeh, “Women and social movement in Jordan in the Arab Spring” *المرأة والحراك الاجتماعي في الأردن في مناسبات الربيع* “العربي”, op.cit, p. 56.

Experience shows that the early stages of the constitution drafting process play a crucial role in determining the direction of future choices for countries. The Tunisian experience for example, showed that simply providing for equality and alternation between women and men on electoral lists was not enough to guarantee the rights of women. This was caused by the type of the electoral system enacted in Tunisia at the time, which was based on proportional representation. Proportional representation enables candidates at the top of lists to win seats in parliament. Hence while women were included on lists as per the parity principle, most of the top positions on lists were given to men.<sup>97</sup> This explains the demand by female activists for adding horizontal parity to vertical parity while discussing electoral law.<sup>98</sup>

## Participation and transparency in the constitution drafting processes

It has become widely accepted that the success of the constitutional process in general, mainly depends on respecting the criterion of participation and transparency in all stages of the constitutional process.<sup>99</sup> It requires the participation of the people and inclusion of all sectors of the society. This requires the opening of communication channels and making way for free discussion on the different choices and constitutional solutions that stem from all societal levels.<sup>100</sup> Participation should not be limited to merely stating opinions. It should include the ability to affect and guide decisions. This means that the public needs to have a chance to express their opinions on issues related to constitution drafting. They would need to be able to participate in public consultations and decision-making as well as being able to mobilise support and exert pressure on the bodies charged with drafting the constitution.<sup>101</sup>

Principles of participation and transparency are relatively new concepts in the Arab constitutional landscape. Throughout their history and different orientations, ruling regimes were never concerned with consulting the people, seeking their opinion, or even informing them about plans affecting

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97 The rate of women heading electoral lists did not exceed 7%. The only political party that implemented the principle of vertical parity (i.e. man/woman or woman/man on every list) and horizontal parity (i.e. to have half of the lists headed by a woman – 16 lists – and the other half headed by a man (17 lists) was the Democratic Modernist Pole.

98 The demand for adding horizontal parity to vertical parity came upon the discussion of the electoral law that was adopted in 2014 for legislative and presidential elections on the basis of Article 46 of the new constitution which stipulates that the State works to attain parity between women and men in elected assemblies; which is considered completely different from the principle of parity at the level of candidacy, adopted by Decree no. 35 regulating the elections of the National Constituent Assembly; and on the basis that experience had shown that vertical parity does not lead to the parity as meant in the Constitution. Consequently, another mechanism had to be added, that of vertical parity. Yet, these claims failed to convince the NCA.

99 Ibid., p. 113.

100 Guide on human rights and the State of the constitution, by Professor Dzidek Kidzia. Social contract publications. Cairo 2013. p. 8. ص 8. الدليل الإرشادي عن حقوق الإنسان ووضع الدستور. إعداد البرفسور دزيدك كيدزيا. منشورات مركز العقد الاجتماعي - القاهرة 2013.

101 Consequently, participation in this field takes different shapes; it is not limited to the representation in the constituent assembly nor participating in constitutional referenda; it rather can extend to offering recommendations and suggestions to the constituent assemblies or any other bodies that may be based on setting the constitution, lobbying, campaigning, taking part in the national dialogue or carrying out public discussions. Civic education is one of the most important means to prepare citizens for public participation, as public discussions and collecting the opinions and suggestions of the citizens in an efficient way are among the most important factors for the success of the participatory process and its credibility. See: Participation and building social consensus in constitution drafting. المشاركة وبناء التوافق المجتمعي في عملية وضع الدستور. lessons learnt from international experiences. دروس مستفادة من التجارب الدولية. Dr. Yaseen Farouk Abou I Aynan. Nadia Abdel Azeem. Social Contract Centre Publications. Cairo 2013. pp. 11-12.

their present and future. On the contrary, for decades, expressing one's opinions remained a dangerous endeavour. Requesting information was subjected to accountability and punishment. Unfortunately, the situation does not seem to have changed a great deal following the "Arab Spring". With the exception of Tunisia's constitutional experience, which seems to be the brightest of all, the experiences of other countries remain the same. They either ignored participatory and transparency standards in form and essence, or claimed to take these principles into consideration formally, but completely disregarding them in practice, using them for propaganda only. These are all in contrast to actual democratic practices.

Compared to its Arab counterparts, the Tunisian constitutional experience was the most respectful of citizen participation and transparency principles. The National Constituent Assembly (NCA) was elected in Tunisia for the purpose of drafting the constitution. From the start, the NCA recognised the importance of respecting standards of participation and transparency, both in word and deed. It opened a door of dialogue with the Tunisian civil society and Tunisian citizens from all walks of life that defined the means for this participation.<sup>102</sup>

Based on the testimonies of majority of people who have been interviewed in this study, the NCA knew it was not working on an ordinary law: it was setting a social contract, on which all future laws would be based. Accordingly, the NCA selected from among its members a parliamentarian in charge of relations with the civil society. This was the first mechanism established within the frame of the participatory approach in drafting the constitution. The NCA then received hundreds of individuals, CSOs, and visited various organisations to have them voice their opinions and visions. It then produced a report based on their input.<sup>103</sup> Subsequently, the NCA got in touch with legal experts specialised in constitutions.

Many important committees were headed by women. These committees catered to issues that went outside the traditional realm of tasks generally given to women, such as public legislation as well as rights and liberties.<sup>104</sup> This in itself was an achievement since it set a precedent for parties to build on, and it would be politically difficult for them later on to stray from such practices. The drafting process of the Tunisian constitution was characterised by a high level of transparency despite the fact that Tunisian authorities have had a long history of secrecy and ambiguity. For instance, the NCA created a website where updates related to its structure and work were published.<sup>105</sup> Local television channels broadcasted the NCA public sessions live. The Assembly also granted CSOs and media the permission to attend all of its sessions and committee meetings.

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102 *Some say that this choice was made in order to guarantee the best chances of consecrating democracy so that Tunisia would not take go backwards. Despite all this, this choice can also be attributed to the consciousness of the Assembly that it had vulnerable legitimacy. It found thus in openness to civil society, regarding constitution drafting, a way to deal with this vulnerability.*

103 *National dialogue report about the constitution of Tunisia. March 2013.*

104 *The Rights and Liberties Committee was headed by Farida Abidi and the Public Legislation Committee was headed by Kalthoum Badreddine, both from Ennahda Party*

105 *See the NCA archive on constitution deliberations on: [http://www.anc.tn/site/main/AR/docs/archive\\_anc.jsp](http://www.anc.tn/site/main/AR/docs/archive_anc.jsp)*

Tunisia experienced a true constitutional revolution in addition to the people's revolution that erupted in Sidi Bouzid. It subsequently crossed the national borders of the country and reached other Arab countries. This also provided more legitimacy to the Tunisian constitution since everybody, women and men, felt that they had taken part in its drafting and were not only subject to its provisions. There were nonetheless tensions. The civil society had strong reactions in relation to NCA's approval of Article 28 of the draft constitution relating to the rights of women:

*"The State guarantees protection of women's rights and supports its gains as a real partner in building the nation. Their roles are complementary in the family. The State guarantees equal opportunities for men and women bearing all responsibilities. The State guarantees the elimination of all forms of violence against women."*

The reason for the uproar by the civil society in general, and women's rights organisations in particular, was the erasure or absence of the principle of equality between women and men. It was instead replaced with an ambiguous concept of 'partnership', and the concept of 'complementarity in the family' which denied the status of women as full-standing individuals.

The concept moreover limited their existence to the traditional family sphere with no acknowledgement of their presence and role in the public sphere. The vision of primary role of women in the private sphere was introduced in a subtle manner and was engulfed by adding principles such as supporting the gains of women, equal opportunities, and eradicating all forms of violence against women. When Article 28 was published, crowds of women and men spontaneously took to the streets throughout the major cities of Tunisia on August 13<sup>th</sup>, 2012. Several actors involved in the drafting of the constitution from the NCA and the civil society stated that what the Tunisian women and men felt upon the publishing of Article 28 was that there was an attempt to confiscate and take over the whole country and to change its cultural and political direction.<sup>106</sup> This would be done, not only through curtailing the advancement of women, but also through an islamisation of the constitution and the society. This explains the mass protests that erupted. Shortly after, the NCA responded with the Ennahda Party confirming through its Member of Parliament, both women and men, that there had been a misunderstanding, and that the text was distorted and taken out of context, before deciding to drop the whole Article.<sup>107</sup>

Participation and transparency were turned into political hoaxes in some countries: advocacy and practice of the principles were only on the surface, without a real adherence to their essence. This was the case of the 2012 Egyptian and Iraqi constitutions. In Egypt, a community dialogue was held in preparation for the 2012 constitution. The Constituent Assembly formed a dialogue committee with associations, organisations, trade unions and political parties. It held several conferences and sessions and opened a website that received opinions and suggestions. Despite the lack of trust,

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106 Quoted from a woman activist who was interviewed.

107 <http://www.tuess.com/alchourouk/567676>

[https://africanmanager.com/site\\_ar/المنتدى-28-من-الدستور](https://africanmanager.com/site_ar/المنتدى-28-من-الدستور)

people participated in these sessions. At the end however, the Constituent Assembly did not take any opinions and suggestions into consideration, whether expressed online or by direct contact. It seemed clear that what was called “social dialogue” was only an attempt to give some democratic semblance to the process of getting hold of power. Feminist groups held different views with regards to the management of the relationship and approaches to negotiation with the Constituent Assembly.<sup>108</sup> Yet, they all agreed on the importance of negotiating with the Constituent Assembly and exerted pressure on it to guarantee women’s rights in the constitution.

It is worthwhile here to shed light on the working mechanisms of the Women and Constitution Working Group (WCWG) and its strategic decisions during this period. The WCWG reviewed the constitutions of several countries during its work to draft specific proposals to be submitted to the Constituent Assembly.

It was able to introduce pro-women texts and gender-sensitive principles. The strategic decisions were to negotiate realistically, while holding on to a high ceiling of demands in order to achieve gains and a balance between what is possible and just. The decision was also aimed at being committed to the Egyptian constitutional heritage for practical reasons given the social and political reality of the country. The WCWG issued a working document that included several basic principles on equality between women and men and on the necessity, that the Egyptian State commit to the international women’s rights and human rights conventions and agreements. They agreed on the importance of engendering the language of the law, and drafted articles on equality, non-discrimination, equal opportunities, the right to work, education, and personal freedom that address both female and male citizens. The document also included a text that obligates the State to represent groups in society and achieve full gender parity.<sup>109</sup>

As for the status of women in the constitution, the Assembly received many proposals from the National Council for Women (NCW) and from the different CSOs working in the field of women’s rights. Yet, all these efforts were to no avail, for several reasons, notably the clear bias of the Constituent Assembly against women’s rights, the hegemony of a religious political discourse that opposed women’s presence in the public domain and the undermining of women’s rights altogether.

Despite efforts aimed at meeting participation and transparency requirements in the drafting of the 2014 constitution in Egypt, political and security circumstances surrounding the process largely constrained the process. During this period, the Alliance of Feminist Organisations has been active

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108 *The Women and Constitution Working Group (WCWG) which began its work in March 2011 within the Coalition of Feminist organizations (formed in the same month), was one of the first groups to prepare for the constitution drafting phase. It included representatives of rights-based and feminist organizations and independent individuals who were experts in women studies. The group started its work in drafting specific articles of the constitution and made substantive comments on the structure and overall methodology of the constitutional text, in preparation for its actual drafting. For more on the Coalition of Feminist Organizations’ contribution to the drafting of the constitution, see: Women and the Constitution (المرأة والدستور), Cairo, The Egyptian Centre for Women’s Rights, September 2012.*

109 *For more on the text of the document and a summary of the work of the Coalition of Feminist Organization See: Women and the Constitution (المرأة والدستور), Cairo, The Egyptian Centre for Women’s Rights, September 2012.*

in advocacy and awareness raising about the importance of including explicit provisions supporting women's rights in the constitution, through seminars and workshops with civil associations in Cairo and in a number of governorates. On July 28<sup>th</sup>, 2013, the Women's Organisations Alliance issued a statement to the Commission of 10, which was tasked with reviewing the 2012 constitution. The document included specific demands, on top of which came the emphasis on the State civil aspect based on a democratic system, the rule of law, and the State's commitment to guarantee the economic, social, political, personal and religious rights of all male and female citizens, as well as adherence to International Charters and Covenants. The statement also included suggested constitutional articles that would provide for equality between male and female citizens, outlaw discrimination, commit the State to adopting policies and mechanisms for affirmative action in favour of women, and guarantee gender equality in public service. After the announcement of the formation of the committee of Fifty, the Alliance sent a letter to all the members on the first day of its meeting on December 8<sup>th</sup>, 2013, presenting its proposals that included the importance of abiding by the International Charters and Covenants, the establishment of quotas for women in elected Councils by at least 35%, and a clear text on equality and equal opportunities, criminalisation of discrimination, gender mainstreaming within economic and social rights and allocation of necessary resources for health, education and scientific research. It is noteworthy that the Committee of 50 that drafted the 2014 constitution was open to suggestions by feminist organisations and adopted many of their demands, contrary to the position of the previous Constituent Assembly in 2012.

In Iraq, the constitution drafting process respected the mechanisms of popular participation at a superficial level. An outreach committee was formed and included members from the constitution drafting committee. They were tasked with collecting the opinions and suggestions from the people and conveying them to the members. The members lived up to their task. However, it was later on revealed that this process was purely formal, since the Commission's work stopped before finishing with opinion polling and analysis. Furthermore, the final draft was made available to a limited number of people only a month before the referendum.<sup>110</sup> It is also noteworthy that women were absent or insufficiently represented in the political transitional process. This can be mainly attributed to the American administration not considering their participation as essential. The Bush Administration refused to allocate a quota for women in the Iraqi Governing Council, although the whole Council was founded on the principle of sectarian distribution. However, women's groups were very determined. Due to all the campaigns they launched, and despite Paul Bremer's opposition, a percentage of 25% was approved for them in elected Councils in the Law of Administration for the State of Iraq for the Transitional Period. Furthermore, among the most important obstacles women faced was the predominance of sectarian distribution in politics after the invasion. Hence, they were the first victims of identity conflicts, because of the very low margin left for difference and negotiation within each group, the rationale being that unity was a must.<sup>111</sup> This was expressed in the following quote: *"the political Islam leaders and the masculinists that glorify tribal values dominated the constitution drafting, public fora and the media."*<sup>112</sup>

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110 Zaid Al-Ali, *The Struggle for Iraq's Future: How Corruption, Incompetence and Sectarianism Have Undermined Democracy*, New Haven and London, Yale University Press, 2014, p. 89.

111 Nadje Al-Ali and Nicola Pratt, «Women in Iraq: Beyond the Rhetoric», *Middle East Report (MERIP) Summer 2006*, pp.18-23.

112 Yanar Mohammed, *about women's status in Iraq: Dialogue with Yanar Mohammed*, by Sanan Antoun. *Jadaliyya*. September 5<sup>th</sup>, 2012.

<http://www.jadaliyya.com/pages/index/7213/حوار-مع-ينار-محمد-حول-أوضاع-المرأة-في-العراق>

In Libya, there were no legal constraints that hindered people from bringing petitions and proposals before the Committee of Sixty in charge of drafting the constitution. Despite this, the security conditions as well as the chaotic internal and external factions at war, made it difficult to reach and communicate with the Committee. Moreover, the Committee itself was sometimes prevented from working due to the ongoing war, which forced it to continue its activities in other Arab cities. Not only did the war stand in the way of guaranteeing a participatory dimension of the constitution drafting process, it also hindered guarantees of transparency. For these same security reasons, it became extremely difficult for civil society observers, their representatives and journalists to attend the Committee's sessions even though they were entitled to do so. In addition to the war and the increasing presence of foreign militia and mercenaries, chaos prevailed due to divisions in the political class and the emergence of two different governments and two parliaments. One was in Tobruk and the other in Tripoli, both of which were fighting over power and legitimacy.<sup>113</sup> This made it difficult to access accurate and clear information concerning the development of the Committee's activities.

Despite all these difficulties, a workshop was organized for 30 women human rights activists under the patronage of the UN Support Mission in Libya, UNDP, and UN WOMEN in the presence of a number of Libyan Parliament and constitution drafting committee representatives. The workshop was held in Cairo in November 2014 aimed at reviewing and assessing the draft prepared by the constitution drafting Committee and to submit a list of recommendations on the subject matter. The aim was to assess and review the draft in light of women's rights and in pursuance of the international treaties and conventions ratified by the Libyan State.

Another workshop was organised for the same purpose in Tunisia in January 2015 with the participation of 30 women activists in order to follow up on the outcome of the recommendations they had submitted to the constitution drafting committee from the Cairo workshop. They also drafted alternative proposals to the Committee of Sixty. This draft showed that the Committee did not adopt any of the proposals submitted in the Cairo workshop.

In Morocco, women's associations participated in the constitution drafting process through presenting a number of proposals, such as the memorandum addressed by the Democratic Association of Moroccan Women to the Consultative Constitution Revision Committee on April 11<sup>th</sup>, 2011. The association asked for a constitution that would guarantee real gender equality as an indicator of democracy.<sup>114</sup>

In Syria, criticism was also pointed at the total lack of any participatory approach. The drafting committee was appointed by a presidential decree disregarding the presence of other social, political, union or professional forces that may have an interest in drafting a real constitution. The drafting of the constitution lacked transparency. It was a process held in a very secretive and furtive environment, despite the appointment of an official spokesperson for the committee. It also lacked

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113 See : J. Y De Cara, "La situation en Libye : analyse d'une double crise", *Maghreb-Mashrek*, 2015, n° 223, pp. 7-35. (*The situation in Libya: analysing a double crisis*)

114 [http://www.adfm.ma/IMG/pdf\\_Memorandum\\_ADFM\\_Fr.pdf](http://www.adfm.ma/IMG/pdf_Memorandum_ADFM_Fr.pdf)

during the referendum and promulgation of the constitution. The minutes of the meetings and discussions of the members of the constitution drafting committee were never published, despite the fact that five years have passed since its promulgation, and *“the draft constitution was never put up for general debate with the public by way of any media outlets, cultural centres or universities, so that its advantages and disadvantages may be weighed by public opinion.”*<sup>115</sup>

In Algeria, it was clear that the participatory approach was completely absent from the Committee’s composition which was appointed by the President himself. Thus, many political parties and national figures, like previous prime ministers, decided to boycott the deliberations related to constitutional amendments. This negatively reflected the quality of political deliberations and prompted observers to note that the President “consulted with himself” during these meetings, meaning that the only consulted with his followers and excluding all opposition.<sup>116</sup> Criticism also revolved around the constitutional amendment adoption process, where the public was not involved or consulted through a referendum. They were satisfied only with the ratification of the parliament accused by a large group of the opposition of being “illegal”.<sup>117</sup> It seems that transparency was also absent throughout the Committee’s work on the constitutional amendment. Several studies related to this phase indicate that the Committee was working in utter confidentiality: *“No one knew where its members were meeting and there was no explanation of the details of its task. Not even the Prime Minister or the Ministers knew of the details of the constitutional amendments; even civil servants in the presidency were not informed about them except for the President’s brother and his private secretary.”*<sup>118</sup> No records of the constitutional amendments were made available, be it during the consultations of the first Committee, which consisted of specialised academics, or the subsequent political Committee’s consultations.

Gender considerations were not seriously put to the discussion. Female representation was limited to the presence of one academic as a member of the constitutional amendments Committee comprised of five figures. The first and second consultation Committees included some female figures and organisations, who again brought to light women’s concerns and rights related to equality and non-discrimination, as well as the repealing of some discriminatory texts and laws. They also demanded the implementation of previous laws related to enhancing women’s political participation.

The degree to which women participated in the constitutional drafting process in Lebanon was neither represented in the first constitution-drafting period, nor in any of its later amendments. Explicit gender-sensitive language was absent in the Taif meetings and in the documents emanating from them.<sup>119</sup> It is essential to note two things in this regard. First, the Lebanese people, both women and men, were not allowed to give their opinions on the fundamental constitution and

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115 A statement issued by the National Coordination Committee on the “referendum on the alleged new constitution”, Executive Office, Damascus, February 26, 2012

116 Nasser Al Jabi. *Constitutional amendment in Algeria and the question of participation* المشاركة في الجزائر وسؤال المشاركة. Al Jazeera Centre for Studies. 14 August/ 2014. p.7

117 Ibid.

118 Fathi Boularas, ‘Algerian constitutional amendment draft: context, opposition and possibilities’. مشروع تعديل الدستور الجزائري، السياق،. Al Jazeera Centre for Studies. May 26<sup>th</sup>, 2013, p, 2.

119 Azza Sharara Baydoun. “The Taif agreement and the feminist issues” اتفاق الطائف والقضايا النسوية. Article published in Annahar Lebanese newspaper. See the link to the article: <http://newspaper.annahar.com/article/184154>

the amendments since a popular referendum was never considered. The constitution was always approved or amended by a Mandate Authority, (MPs whose mandate was extended), or leaders who decided on a certain custom that became stronger than any constitutional text, similar to what happened with the 1943 National Pact. Second, women, were absent all along the successive constitutional processes both during the drafting and amendments. Furthermore, meetings have been quasi-secretive, and their contents have been decided and adopted by the governing regime, without amendments, similar to the pre- “Arab Spring”.

The above raises questions as to why the Tunisian constitution<sup>120</sup> passed the “test” of participation and transparency, in comparison with constitutional attempts in other Arab countries which failed – albeit to different extents – to commit to these principles and standards. It is evident that respecting participatory and transparency standards while laying the foundation of the constitution requires both a willingness and ability to do so. This means the will of the authority responsible for the process to abide by principles and standards in words and deeds, regardless of the authority’s conviction to do so, or as an answer to pressure. The authority should also live up to these requirements, namely a safe environment with a civil society capable of bearing responsibility of this participatory process.

The political reality surrounding the Tunisian experience was largely different, as the regime fell and the President was ousted. Out of these circumstances, there was a wish for the process to become successful. Regardless of the extent to which there had been political and intellectual disagreement among authorities, this wish was often portrayed as an attempt to add legitimacy to the entire constitution drafting process, and to avoid the backlash of having one political/religious group taking over the majority of seats in the Constituent Assembly. It is worth noting that this justification did not undermine the clear wish to move forward with the process by ignoring opinions and suggestions. As a matter of fact, the aim was to conduct a transparent and participatory process, as well as abiding by the outcome. It illustrated an awareness that both these decisions were interdependent and thus had to go hand in hand in order to ensure a successful drafting process.

The study has found that this will and determination was lacking in the majority of the other constitution drafting experiences. In particular, those carried out under the auspices of political regimes that continued to rule, and of leaders that withheld power. The ruling regimes did not, in fact, understand the need to change the rules of the constitutional process. They failed to realise that, after the “Arab Spring”, they would no longer be able to dub themselves the “custodians” in charge of overseeing the drafting process, or to have the final word as they did before, and that they would merely become a party to the ongoing conflict, if not its direct trigger.

The study also demonstrates, that in addition to the political will and the ability to enable a participatory and transparent process, developments of the “Arab Spring” have highlighted the

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*120 It should be noted that, while the Tunisian constitutional experience has been highly praised for its participatory and transparent nature, it has also come under criticism by specialized rights-based organizations that monitored and assessed the process. Such organizations found that there had been a will to involve the citizens in the process, but the lack of planning and the absence of a methodology and the lack of understanding of public participation resulted in limited participation opportunities for Tunisians. For the full assessment of the experience, see: “Constitution drafting process in Tunisia”, Final report. 2011-2014. Carter Centre, pp. 84-85.*

importance of security circumstances on the one hand, and CSOs' capacities on the other hand. It has become evident that the more violent the situation is, the less efficient civil society will be, and the less likely it will be able to meet participation and transparency requirements.

The success of the Tunisian experience is credited to the country's ability to maintain the revolution with the least violence and destruction possible on the one hand, and to enable a strong and active civil society on the other. This study shows that the Tunisian civil society did not wait for permission to perform its participatory role, but rather imposed its presence and assumed its role efficiently during this period. Other countries lacked these components, some suffered from raging wars that has made civil society's contribution to the drafting process a very difficult and dangerous endeavour. Moreover, decades of political isolation and restrictions imposed on the civil society in several countries have eradicated its strong, active, and qualified presence, which in turn has prevented the civil society from assuming its role and imposing itself "à la tunisienne".

Some countries have been unwilling to take participation and transparency into account. They have also lacked the adequate security circumstances and strong CSOs, such as in Syria and Libya. Although the security situation allowed for participation and transparency in the drafting process in other countries, the political unwillingness remained. Even if it did exist, the absence of CSOs for decades would be a considerable issue. Hence, the result has been the same: participation and transparency were completely disregarded in the majority of the drafting processes.

## **The role of social media and international support**

While assessing the constitutional processes, it should be noted that two elements played an important role. The first is the contribution of the internet and social media networks and the second is related to the international support of the constitutional processes. With regards to the first element, internet and social media outlets played a significant role in the constitutional process of the "Arab Spring" countries<sup>121</sup> in two different stages:

**During the popular protests:** The digital communication media played an important role in mobilising people, inviting them to demonstrations, exchanging information and news, unveiling exactions and violations and even broadcasting live the events of the revolution squares. Consequently, many regimes resorted to cutting internet as a security measure in the face of protests. This was the case in Egypt, for example, when the Egyptian authorities cut the internet for five consecutive days at the start of the 2011 revolution.

**During the constitution drafting process:** The internet contributed in some countries to enabling participation and transparency. Committees involved in the constitution drafting process opened social media outlets and websites to publicise their work and to discuss it, as well as to receive opinions and suggestions, and to facilitate and organise communication with the members of the

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121 As to the role of internet in the "Arab Spring" process, see: Yves Gonzales- Quijano – "Making the Arab Identity: The Digital Spring of the Arab World!" in *General Union for Palestinian Writers. First edition, 2015.*

constitution drafting committee. This helped with the departure from secrecy that had traditionally surrounded the process all along the previous decades.

As far as the second element is concerned, it was obvious that the absence of any participatory approach or transparency in the majority of the previous constitutional experiences limited the possibility of mobilising international support. It limited the support for the process and reduced the intervention and contributions of organisations and international CSO. Such initiatives could have made an advantageous contribution in offering expertise and advice, pinpoint some specific issues, as well as offering options and alternatives with regards to how to overcome these issues. They could have also been able to offer technical and logistical support to help this constitutional process succeed. With the exception of the Tunisian experience, the other processes were pursued either hastily, like the 2014 Egyptian constitution, or in total secrecy and behind closed doors. This prevented any positive support that may have been offered to make the constitutional process successful, in particular, successful engendering constitutions to include the rights of women. Although the absence of approaches to participation and transparency in the drafting constitutions may impede international support of the process, it does not rule it out completely. The contributions of international actors can take on different forms.<sup>122</sup> The latter can persist in demanding that constitutions are gender-sensitive, even if they are written by a small elite.

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<sup>122</sup> For an account of possible interventions and support see: *Building a State that works for women: Integrating gender into post-conflict State building* by Clare Castilla. Working paper 107 published by Fride. March 2011, pp. 15-28.

## Part 2:

### CONSTITUTIONAL PROCESSES AND TEXTS FROM A GENDER PERSPECTIVE

The analysis of legal texts from a gender-sensitive perspective is a relatively new endeavour. The first studies in this regard, date back to the 1970s beginning in Scandinavia,<sup>123</sup> and later, the USA<sup>124</sup> and Europe.<sup>125</sup> Such studies are still weak and scattered in the Arab region: they are published by individual writers with a lack of a systematic gender-sensitive approach in universities. The recent constitutional and political changes witnessed by the Arab region offer an opportunity for the examination of the new constitutions: those that are in preparation, and those that have been amended due to these changes. From this point of view, can the so-called “Arab Spring” be considered as a turning point as to women’s rights and gender equality, and if so, to what extent? In this process, constitutions have been chosen as a focus for many reasons. There are practical reasons, such as the legislative restructuring, based on the outcome of the constitutional and political transitions in the region. This restructuring is still at an early stage which consequently does not allow for a full and in-depth analysis of legislation. More importantly however, there are reasons related to the specificity of the constitutional text itself. Indeed, the constitution is characterised by its dual nature as being both a social contract and a legal text.

As a social contract, the constitution is an expression of all that is common in a society. This is in addition to the essential principles that form the basis of social cohesion and State formation. Building this common ground does not only require agreement on a vertical level of relationships which links State to society. It also regulates the way the State frames society. A common ground also requires agreement at the horizontal level, that is, the relationship between the different social components. As a result, the question of women and their status in society, how these are reflected in constitutional terms, whether in the private or public sphere, should be raised.

As a legal text, the constitution takes up a significant position in the legal system because it represents the supreme law in the country. Thus, all other legal texts promulgated by authorities (the legislative, executive, and the judicial branches), that have been established and have been given specific jurisdictions by virtue of the constitution, must be compliant and consistent with the constitution. As a result, substantial choices regarding the system of government and the social model i.e. the status of the individual in general, and in particular the status of women will be pivotal in this regard, because they design the legal system of the State as a whole.

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123 See for example, T. Dahl, *Women’s Law. An Introduction to Feminist Jurisprudence*, Norwegian University Press, (Oslo 1987).

124 See for example, C. A. MacKinnon, *Toward a Feminist Theory of State*, Cambridge (Mass) Harvard University Press, 1898, C. A. MacKinnon, ‘Reflections on Sex Equality Under Law’, *The Yale Law Journal*, No. 100, 1991, pp. 1281-1297.

125 In this regard there is the research undertaken by the Swiss Institute for Feminist Legal Studies and Gender Law that can be accessed via the following link: [www.genderlaw.ch/](http://www.genderlaw.ch/). Alternatively, the Olympe Network that can be accessed here: <https://olympereseauinternational.wordpress.com/>. A pioneering contribution in the field of engendering constitutions is S., Suteu & I., Draji, eds. B., Jonsson & M., *Alrahabi ABC for a Gender Sensitive Constitution*, Paris, 2016: [http://www.efi-ife.org/sites/default/files/ABC for a Gender Sensitive Constitution.pdf](http://www.efi-ife.org/sites/default/files/ABC%20for%20a%20Gender%20Sensitive%20Constitution.pdf)

Based on the above, the constitution can be a conservative tool that merely endorses existing social patterns, with all its discriminations, inequalities and normalisation of forms of violence against certain social classes. These relate to forms of violence in general, and women in particular, under the pretext that the social patterns are based on a set of traditions and cultural peculiarities. Alternatively, the constitution can be a tool of social modernisation that pushes society forward. It can be a tool that rids society of its remnants of traditions that justify discrimination and even violence against women. It can do so by outlining a new social model based on the universality, and interdependence of human rights and human dignity. By examining the constitutions under study through the lens of gender, this chapter seeks to determine under which category the constitutions of the countries fall under. That is, the extent to which they are conservative or modernising, or whether they are placed somewhere in between. The special moment witnessed by the Arab region, carried a rebellious spirit on the one hand, and succumbed to the pressure exerted by conservative forces on the other. Both of these dynamics are reflected in constitutional reforms (or their absence) in recent years.

### A. “Arab Spring” and choices of constitutional reforms

Before examining the constitutional texts, themselves from a gender perspective, it is useful to recall the different positions adopted vis-à-vis the structuring of the constitution and specifically, how the form that this structuring would take shape. Such positions have either varied between calling for a break with the existing constitution, on the basis that it has represented the toppled regime, or opting for introducing amendments to the existing constitution. The former has been witnessed in countries where the popular revolutionary movement toppled the regime, as in Tunisia, Libya,<sup>126</sup> and even in Egypt<sup>127</sup>. The latter was the path taken by countries in which the authorities were able to survive the protests and chose to approach the crisis with constitutional amendments as was the case in countries like Jordan, Morocco, and Algeria. Iraq however, have faced a constitutional restructuring process which it did not choose itself. Lebanon has remained in a limbo, with neither restructure nor reform.

Each of these choices have justifications and repercussions. Those who chose to break with the existing constitution justified this choice on the basis that it was a natural outcome of the revolution. It was the only way to achieve the goals of the revolution and to uproot the system of totalitarianism and its perpetrators. The clearest expression of this is demonstrated in Decree No. 14 of the 23<sup>rd</sup> of March 2011 issued by the interim President of the Tunisian Republic. The President announced the intention to have a new constitution drafted by a committee that would be elected by direct and universal suffrage. *The decree stipulated the following: “Considering that the people have expressed during the revolution of the 14th of January 2011, their will to exercise their full sovereignty within the framework of a new constitution [...].”*

Those who chose the route of continuation with their existing constitutions, like Jordan, Algeria and Morocco, offered justifications which were often based on the denial of the revolutionary movement

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<sup>126</sup> Bearing in mind that the State of Libya did not have a constitution under Colonel Muammar Gadhafi.

<sup>127</sup> Although Egypt has not established a new constitution, it has amended its constitution on three occasions since 2011, two of which have been comprehensive amendments.

and the intention of existing authorities to undertake political reforms to support democratisation. As for the repercussions of the choices chosen, they have been somewhat paradoxical because the decision to break with the old and to embark on a restructure of the constitution has not necessarily been a better choice in improving the legal situation of women. The popular movements were transformed from being protests that called for political, economic and social rights, as well as for freedom, equality and dignity, into a debate on identity, and on the status of Islam in the State and society. As such, Islamist currents produced plans for the 'islamisation of the State' and in this regard, called for a break with the existing constitutional systems. They did so, not because it was a totalitarian system that had acted in contravention of rights and freedoms. Rather, it was with the purpose of abrogating the few legal texts that referred to gender equality and guaranteed the rights of women. Their pretext was that these laws were not accepted by society: they were dictated by a dictatorship. A good illustration of this is the attempt by the Islamic Ennahda movement in Tunisia to introduce the notion of the woman as "a real partner in building the nation with men, and their roles are complementary in the family", instead of stipulating equality between women and men. The notion was introduced in Article 28 of the draft constitution, issued in August 2012. Similarly, in his first statement upon his appointment as President of the LTC in March 2011, Mustafa Abdel Jalil said that he would establish an Islamic system and abolish all laws contradicting the Islamic Sharia, including first and foremost the law restricting the right to polygamy. These examples indicate that although being very inspiring at first, a complete break with the pre-revolution constitutional and legal system may sweep away all prior gains relating to freedoms. These gains, although modest and fragile, still deserve to be preserved and built upon. Thus, the discourse promoting 'revolution' as a new beginning does not come without risk: it denies prior acquired gains relating to the formation and development of every society. The discourse moreover presents the alternative as the only solution, regardless of its content.

## B. Criteria in measuring the gender-sensitivity of the constitutions under study

For the purpose of analysing the constitutions from a gender perspective, five criteria have been chosen to determine whether the constitutions of the countries under study are gender sensitive. The criteria specifically explore whether the constitutions elevate women to the position of a human-being/citizen and on an equal footing with men. These include:

- **The language used** in the constitutional text, and whether it is engendering or not;
- **The relationship between religion and the State** and the direct implications it can have on the nature of the laws adopted and consequently, on the vision of the rights and freedoms;
- **The status of international law in the national legal system**, in order to understand the position of international human rights in the legal system of the concerned States;
- **The presence of the principles of equality and non-discrimination** among the provisions of the constitution;
- **The mechanisms and guarantees for implementing the rights of women**, which should not only be declared in the text of the constitution, but should also be protected.

## First criterion: Engendering language

Some might consider that language is only a formal matter, with no implications on the guarantee of the rights of women, and their protection on the basis of equality between women and men. However, language is undoubtedly a tool that reflects the mental structure of individuals and the groups who use it. It is a tool for expressing the perceptions of its users', in relation to their relationships with each other, and the perceived status of each and one of them within the social group. Relationships that are based on discrimination, exclusion and hegemony are ones that produce linguistic tools which serve to express these perceptions, not the opposite.<sup>128</sup> The fact that there is a distinction between masculinity and femininity in languages, where the masculine gender combines both of the masculine and feminine, reveal the nature of relationships that exist between the two genders, and their respective position within society.<sup>129</sup>

The constitutions studied here present a wide spectrum of level of engendering: on one end of this spectrum the Moroccan constitution appears to be fully engendered, and on the opposite end, the constitutions of Syria, Jordan and Lebanon are completely gender-blind in terms of their language. Between these two extremes, lies the five remaining constitutions which appear to be partially engendered. Article 19 of the Moroccan constitution is the introduction on the rights and freedoms. It establishes them in their universality and both genders are mentioned:

*“The man and the woman enjoy equally the rights and freedoms of civil, political, economic, social, cultural and environmental character, enounced in this Title and in the other provisions of the constitution [...]”*

The constitution continues in the same spirit in all of the articles that tackle rights and freedoms, one by one, in separate articles. For example, Article 30 on the political rights reads: “All the citizens [feminine] and the citizens [masculine] [...] are electors and eligible. The law includes provisions for encouraging equal access to women and men to elective functions.” The constitution also mentions economic, social and environmental rights. Article 31 for example reads:

*“The State, the public establishments and the territorial communities work for the mobilisation of all means available in order to facilitate the equal access of the citizens [feminine] and the citizens [masculine] equally to conditions that permit the enjoyment of the right to healthcare; to social protection; to medical coverage and to the mutual and organised joint and several liability of the State; to a modern and accessible education of quality; to education concerning attachment to the Moroccan identity and to the immutable national constants; to professional instruction and to physical and artistic education; to decent housing; to work and support the public powers in matters of searching for employment or self-employment; to access to the public functions according to the merits; to the access to water and to a healthy environment; to lasting sustainable development.”*

The Article covers social, economic and environmental rights guaranteed explicitly for both genders by addressing each and one of them separately, while stating the duty of the State and its

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128 See : C. Cardé et A-M Devreux, *Cahiers du genre*, “Le genre et le droit une coproduction” vol. 2, n° 57, 2014, pp. 5-18

129 See: V. Perry, “Catégorie du genre linguistique et performativité : pour une expérimentation des identités contextuelles du genre en classe d’Anglais”, *Etudes de linguistique appliquée*, vol. 2 ; n° 142, 2006, pp. 201-214.

responsibility to guarantee these rights. It mentions that this duty is also a responsibility of public institutions and territorial communities. This last mention is significant, because of the support granted by the Moroccan constitutional reform of 2011 to decentralisation. By virtue of this Article, it is asserted that local democratisation is accompanied with the guarantee of same opportunities of female and male citizens in administering public affairs, and with the commitment of the local authorities to guarantee the same rights and freedoms on the basis of equality between women and men.

The engendered formulation of the Moroccan constitution is not restricted to the articles related to rights and freedoms only. It also covers the provisions related to duties. This is appreciated and desired, because it proves that rights cannot be separated from obligations. It is also important because just like the enjoyment of rights and freedoms, they honour and elevate the individual to the level of citizenship. We need to emphasise this point in particular, because opponents to gender equality often say, with a somehow provocative and challenging tone that if women want to enjoy the same rights as men, they have to undertake the same duties, insinuating that this is a burden that women cannot bear. Hence, Article 37 of the Moroccan constitution reads that: *“All citizens [feminine] and citizens [masculine] must respect the constitution and conform to the law [...]”*. The recognition reveals that the rule of law- meaning the duty of everyone to respect the law and its provisions without discrimination - whether it is by the ruling power or the society in all of its components. It carries both an individual and a collective responsibility. Individual responsibility in this regard, means that the party concerned with this duty shall have reached adulthood and enjoyed the freedom of will, which makes her/him able to bear the repercussions of her/his attitudes and choices. Explicitly recognising the capacity of women to take on this responsibility is an important point in societies where moral values have considered women as ‘mentally and religiously incomplete’. According to Article 38: *“All the female and male citizens contribute to the defense of the country and of its territorial integrity against any aggression or threat.”* The engendering of the text of this Article is important because it confirms an abandonment of the traditional distribution of tasks between women and men. It abandons the idea that all activities related to security and defense, as well as the use of weapons and warfare is a masculine activity exclusively. The Article recognises that this duty is the responsibility of both women and men equally and avoids the exclusive use of the masculine gender on this issue in order to prevent any narrow interpretation that excludes women based on this traditional distribution of roles between women and men. In the articles that do not use engendered formulations, generic expressions are used, which equally includes women and men. For example, Article 34 on the rights of persons with disabilities reads: *“The public powers enact and implement the policies designed for persons and for categories of persons with special needs”*. As far as language is concerned, the Moroccan constitution may be considered as advanced in comparison with the Tunisian one, as we will see later, because the former has committed to engendering language in full.

Unlike Morocco, countries like Jordan and Lebanon have no gender sensitive language in their constitutions, despite multiple amendments. For example, the adoption of a new Syrian constitution following the popular unrest, the masculine character in the constitutional language remained unchanged. There is an exclusive use of masculine-centred language in the constitutions of these countries. There is also a lack of provisions in the respective introductions to the chapters on rights

and freedoms and final provisions that could explicitly state that the use of masculine gender in the text encompasses both genders. This leaves the door open to narrow interpretations of the masculine gender, such as the provisions relating to the occupation of the highest decision-making positions in the State. Article 6 in the Jordanian constitution includes a general recognition of the rights and freedoms, stipulating the need to guarantee some of them. The Article is an example of an absence of feminine gender from some constitutions, because it bears all the considerations that indicate its masculinist orientation of the constitution as a whole.

It reads:

*“Jordanians shall be equal before the law with no discrimination between them in rights and duties even if they differ in race, language or religion.*

*The State shall ensure work and education within the limits of its possibilities, and shall ensure tranquillity and equal opportunities to all Jordanians.*

*The defence of the country, its territory, the unity of its people and the preservation of social peace are sacred duty of every Jordanian.*

*The family is the basis of society the core of which shall be religion, morals and patriotism; the law shall preserve its legitimate entity and strengthen its ties and values.*

*The law shall protect motherhood, childhood and the old-aged; and shall avail care for the youngsters and those with disabilities and protect them against abuse and exploitation.”*

A first observation concerning this Article is that the formulation of all rights and duties, is in the masculine gender, not the feminine. A second observation relates to those who profess that the masculine gender encompasses both women and men. It is difficult to defend the belief that the interpretation of the text on this basis grants women the same rights as men. This Article, addresses non-discrimination between Jordanians’ rights and obligations. It mentions language, race, and religion but not gender. It will be therefore difficult for women to use this Article when claiming the same rights granted to men. Nowhere in the rest of the provisions of the Jordanian constitution suggest that the ‘reform’ which led to its amendment has changed the legal status of Jordanian women. In fact, it shows the limited scope of the reform, which has failed to realise how potentially historical this could have been.

The Syrian constitution is no different from the Jordanian. The constitution has also confined itself to the masculine gender in addressing the rights, freedoms and obligations of Syrian women and men. Article 33 reads as follows:

*“Freedom shall be a sacred right and the State shall guarantee the personal freedom of citizens and preserve their dignity and security;*

*Citizens shall be a fundamental principle which involves rights and duties enjoyed by every citizen<sup>130</sup> and exercised according to law;*

*Citizens shall be equal in rights and duties without discrimination among them on grounds of sex, origin, language, religion or creed;*

*The State shall guarantee the principle of equal opportunities among citizens.”*

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130 *Masculine in Arabic.*

Article 38 reads:

*“No citizen may be deported from the country, or prevented from returning to it; No citizen may be extradited to any foreign entity; Every citizen shall have the right to move in or leave the territory of the State, unless prevented by a decision from the competent court or the public prosecution office or in accordance with the laws of public health and safety.”*

Article 40 foresees that:

*“Work shall be a right and a duty for every citizen, and the State shall endeavour to provide for all citizens, and the law shall organise work, its conditions and the workers’ rights; Each worker shall have a fair wage according to the quality and output of the work; this wage shall be no less than the minimum wage that ensures the requirements of living and changes in living conditions; The State shall guarantee social and health security of workers.”*

Syrian feminist activists have also objected to the drafting of the conditions for running for the office of President of the Republic on the basis that the related provisions are not engendered. Article 84 reads that: *“A candidate<sup>131</sup> for the office of the President of the Republic should [...] not be married to a non-Syrian wife [...]”* This formulation means that the candidate for the office of the President of the Republic should be a male because of the use of the notion of ‘candidate’ in the masculine, but also because of talking about the ‘wife’ of the candidate, not the ‘husband’. Due to the objection of this by feminist activists, one of the female members of the Constitution Drafting Committee presented a concept that was different from this interpretation. She underlined that there is no discrimination against women and that the legal language requires concision. Therefore, it is not possible to engender all references in the text:

*“[...] there is nothing called man or woman in the new constitution; the latter has indeed guaranteed equality between men and women. Any legal system that contradicts the concept of citizenship is unacceptable. Concerning all that is being said about depriving Syrian women from running for office and consequently taking the office of the President of the Republic, there is no mention in the constitution of men and women. It does not mention either that man as a male only has the right to run for the office of President of the Republic, it rather confirms gender equality in rights and obligations. However, confusion is raised by the fact that legal language requires shortening...and the Committee has been keen on carefully selecting terms and expressions. If the dispute is about the term “wife” this cannot mean that the office of the President of the Republic is exclusively restricted to males and excludes females, it rather means spouse or partner, male or female.”<sup>132</sup>*

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131 Masculine in Arabic.

132 Dr. Amal Yazigi, Professor at the Faculty of Law and member of the drafting committee of the constitution. This opinion is referred to in the article of Ivan Duba: ‘Syrian women and the constitution [...] partnership in battle not in spoils’, accessible via the following link: <http://womenspring.org/news.php?go=fullnews&newsid=218>

Subsequent events did not help settle this divergence in the interpretation of Article 84. The Article has been reinforced by law in the Syrian Constitutional Court (SCC). It uses exactly the same formulation when stipulating the conditions that need to be met by the candidate for the office of President of the Republic (conditions which the SCC itself must check). Article 18 of the Law stipulates that a candidate for the office of the President of the Republic shall: “*not be married to a non-Syrian woman*”. Article 21 of the same Law has also established that “*a civil register extract of the candidate’s wife should be attached to the candidacy application*”. During the first presidential elections in 2014, under the 2012 constitution, a Syrian woman, Mrs. Sawsan Omar al-Haddad, ran for the office of the President of the Republic<sup>133</sup> and the SCC announced that her candidacy was filed<sup>134</sup> and that it had notified the People’s Assembly.<sup>135</sup> Article 23 of the Law of the Court indicates that the candidacy application cannot be accepted by the SCC unless the applicant has obtained a written approval of their candidacy by at least thirty-five members of the People’s Assembly. Mrs. al-Haddad failed to obtain the written support required. Her bid for candidacy ended there without reaching the stage of SCC “examining the lawfulness of the candidacy applications”. Consequently, it was not possible to know the official interpretation of the constitutional text as to whether or not a Syrian woman does have the right to run for the office for President. The issue therefore remains undecided and ambiguous.

Between these two extremes, there are conventional texts that address the man and the woman: the [masculine] citizen and the [feminine] citizen; the use of neutral and comprehensive expressions such as ‘persons’ and ‘people’ or; provisions that exclusively use the masculine gender. This is the case in the constitutions of Tunisia, Egypt, Libya, Algeria and Iraq. Article 20 of the Iraqi constitution states that “*Iraqi citizens, men and women, shall have the right to participate in public affairs and to enjoy political rights including the right to vote, elect, and run for office.*” In addition to the preamble of the Iraqi constitution, Article 20 is the only provision where feminine gender is used next to the masculine. Article 21 of the Tunisian constitution, both genders are used generically and comprehensively:

*“All citizens, male and female, have equal rights and duties, and are equal before the law without any discrimination. The State guarantees freedoms and individual and collective rights to all citizens, and provides all citizens the conditions for a dignified life”.*

This dual use of gender formula is abandoned in other provisions, such as those concerning the freedom of choosing one’s place of residence, and the freedom of movement. For example, Article 24 reads:

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133 Engineer Sawsan Omar Al Haddad who announced that she has applied for withdrawing from the Socialist Arab Baath party to run for the office of President confirming that “We, in Syria, have equality between men and women”.

134 It was filed in the registry of the Constitutional Court under number 8 on the 29-4-2014

135 In conformity with paragraph 1, Article 86 of the Syrian constitution reads that: “The President of the Republic shall be elected directly by the people”. Article 85, lays out the conditions and mechanism for running for office. It provides that the applications shall be submitted to the Supreme Constitutional Court and are entered into a special register. The candidacy application shall not be accepted unless the applicant has acquired the support of at least 35 members of the People’s Assembly; and no member of the Assembly might support more than one candidate. Then, the applications are examined by the Supreme Constitutional Court.

*“The State protects the right to privacy and the inviolability of the home, and the confidentiality of correspondence, communications and personal information. Every citizen has the right to choose their place of residence, to free movement within the country, and the right to leave the country.”*

The adoption of both feminine and masculine gender in a distinct and direct manner in relation to freedoms is very important for women. It protects them from laws that could prohibit their mobility inside the country, as well as travelling abroad without the consent of their ‘guardian’. This restriction might create an obstacle to education, particularly at the university level which may require women to leave their family’s place of residence, for another town or country. This could also be an obstacle to the women’s right to work and with it, the right of movement needed. The masculine gender has been exclusively used in Article 9, which reads: *“Protecting the unity and integrity of the homeland is a sacred duty for all citizens.”* This is an Article that concerns obligations and indicates that there are still some remnants of gender-based division of roles within the Tunisian society. National defense, the responsibility for the protection of the nation and the people, such as the use of weapons are associated in the collective imagination, with men and not women. The Tunisian constitution in this matter has not followed the same route taken by the Moroccan constitution as mentioned above. The Article related to the right to healthcare varies between the comprehensive and the masculine restrictive formulations. Article 38 of the Tunisian constitution mentions that *“health is a right for every human being.”*, and; *“the State shall guarantee preventative health care and treatment for every citizen<sup>136</sup> [...]”* The fluctuation between the two formulas is potentially detrimental to women and their specific healthcare needs, especially in terms of reproductive health. Besides these exceptions, the Tunisian constitution have predominantly opted for the comprehensive formula including both women and men, such as the right to protection against arbitrary arrests:

*“No person may be arrested or detained unless apprehended during the commission of a crime or on the basis of a judicial order. The detained person must be immediately informed of their rights and the charges under which they are being held. The detainee has the right to be represented by a lawyer. The periods of arrest and detention are to be defined by law.”*

There is also the use of a formula that focuses on the duty borne by the State to guarantee a certain right or a certain freedom without mentioning directly the parties concerned, as in Article 31: *“Freedom of opinion, thought, expression, information and publication shall be guaranteed. These freedoms shall not be subject to prior censorship.”*, or the provision on the right to join unions as in Article 36: *“The right to join and form unions is guaranteed...”*.

It is worth noting that the partial use of engendered language in the Tunisian constitution may represent for a means that selectively guarantees women’s rights. Indeed, Article 146 of the constitution prevents this interpretation, as it states that the constitutional provisions are mutually explanatory where one interprets the other: they consist of a homogenous unit. Therefore, any

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136 *Masculine in Arabic.*

interpretation that excludes women concerning the rights where only the masculine form was used, will rob the constitution of its consistency. Article 21 stipulates equality in rights and duties in general between citizens, male and female. The Article is considered to be an acknowledgement by the Constituent Assembly that all rights and freedoms stipulated in the constitution are guaranteed to all citizens, both genders and equally, even if they have not been explicitly stated in engendered language (of a feminine form). However, when considering how adequate the Tunisian constitution is in terms of gender-sensitive standards, a considerable downside that comes to light is that equality is only limited to rights and freedoms of citizens for both genders. The constitution should have endorsed equality between all women and men, especially given that fundamental rights and freedoms, such as freedom of belief, conscience, physical integrity, and the right to a fair trial, must be granted to all individuals, whether or not they hold the nationality of the country in which they reside.

The same variation between the use of masculine gender and the engendering of language is also seen in the Libyan draft constitution. For example, Article 16 states that: *“equal opportunity shall be guaranteed for male and female citizens. The State shall work towards taking the necessary measures to achieve this”*. Article 17 furthermore states that: *“assuming public posts among all Libyans<sup>137</sup> shall be based on the criteria of merit and eligibility...”*. Here, there is no engendering of an Article that relates to positions of decision-making and leadership. What has been commented on the Tunisian constitution above, can also be applied to the Libyan draft constitution. Article 7 of the draft constitution states that: *“male and female citizens shall be equal in and before the law [...]”*. Equality here refers to equality in the law, that is equality in the rights, freedoms and obligations. Equality here is guaranteed for male and female citizens, and therefore, this general Article may be used as a basis for claiming equality between women and men for any right or freedom, despite the complete absence of gender sensitivity in the constitutional text.

Whether in the constitution of 2012 or 2014 in Egypt, feminist claims were faced with a masculine mentality that has been entrenched in the society as a whole, as well as with some of the members in the Committee of the Fifty of the 2014 constitution. In both constitutions, language engendering was limited to the mentioning of ‘[male and female] citizens’ in the preamble.

After this overview, the following observations can be made: the law is a kind of discourse and every discourse entails an interpretation, regardless of how clear it already is thought to be. An official interpretation of the law, that is, an interpretation of the legal discourse found in the law of the country is binding on citizens and authorities. The interpretation is carried out by the bodies of the State in charge of the enforcement and application of laws, particularly courts. Adopting an engendered language in the drafting of constitutions would in effect pre-empt selective interpretations by conservative authorities which may be discriminatory against women as far as their rights are concerned.

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137 *Masculine in Arabic.*

The lack of gender sensitive language in a constitution is not the only issue. Problems also arise where constitutions have engendered some, but not all provisions. In the first category, the rights of women are clearly ignored. In the second category, such rights may be ambiguous and confusing. Consequently, if feminine gender is mentioned in some provisions but not others, authorities such as judges that are charged with the enforcement of the constitution may use this as a pretext to exclude women from provisions that stipulates rights. This may be a possibility in the Libyan example. If the committee that drafted the constitution wanted to guarantee the right of access to public office to Libyan women and men, as found in Article 17, it could have used the same feminine and masculine genders in Article 16 that deals with equal opportunity for both genders. Many examples such as these can be found, whether it is in the Libyan draft constitution or in other constitutions where there is a shifting use between engendered language and masculine gender. This is particularly problematic in the absence of a comprehensive article that establishes equality between women and men or between [female] citizens and [male] citizens in the rights, freedoms and duties.

The problem with partial choices is that they leave the guarantee of women's rights to the discretionary authority of the judge in accordance with her/his competence as a law enforcement authority. They also leave the guarantee to the legislator, whose duty is to issue the required laws to enforce the constitution, and who can then draft discriminatory laws on the ground that the constitutional article to be enforced does not address the genders equally. An example is related to the Tunisian constitution of 1959, in which the conditions in the Article related to running for the presidential elections were interpreted as opening the door to male candidates exclusively. It was made under the pretext that the relevant Article addressed the citizen in masculine gender and not in feminine gender.

## **Second criterion: The relationship between State and religion**

The role of religion in the State and its relationship with politics is a crucial matter. It directly reflects the nature of the relationship between the ruling regime and society on the one hand, and the ruling regime and the individual on the other. First, there is the relationship of individuals to the ruling regime. When a regime bases its rule on religious legitimacy,<sup>138</sup> its representatives may enjoy some vestiges of sanctity that may hinder people's right to monitor their actions and hold them accountable. Such sanctity might also limit their acceptance of a basic principle that they must respect: that the rights and freedoms of individuals are a limitation to the powers they have. Second is, the relationship between individuals and the laws that regulates their affairs. If the laws are presented as derived from Sharia law, they will have such a sacred character that could deprive citizens from both genders the right to participate in developing and amending Sharia law in accordance with evolving requirements of social life. Citizens may also be deprived from the right to assess and criticise such laws. Furthermore, the relationship of State-religion and law-politics carries direct repercussions on the legal status of women and their rights and freedoms. According to the respective dominant interpretations of the three Abrahamic religions, Judaism, Christianity and Islam, women have not been elevated to the level of being fully fledged citizens, meaning, they do not enjoy rights, freedoms and duties on an equal footage with men.

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<sup>138</sup> *What is worthy to note is the quality of the "Commander of the Faithful" which the Moroccan constitution grants to the King.*

The status of religion in the State and its relationship with politics has occupied an important place in discussions, both within the entities in charge of drafting new constitutions, and in the wider society. Such discussions have revealed that Arab societies are strongly attached to religious affiliations. In addition, there is a widespread conviction that Islam is threatened by external and internal forces, resulting in a sustained effort to render Islam the sole regulating factor and reference point for all components of society. Religious currents have unquestionably seized the opportunities of revolutions and uprisings that have taken place. The religious issue has thus been repositioned as a top priority effectively diverting the revolutionary wave into a struggle over religious identity.<sup>139</sup> The feminist cause has been the first to pay the price, even though women were and are still at the forefront of the protests. To illustrate, the decision taken in February 2017 by the military authority of western Libya, General Abdul Razzak Nadhuri, forbade women under the age of 60 to travel outside of Libya without 'mahram' citing security reasons (a "mahram" indicates a guardian who is either a husband, father, brother or son). In his announcement, the General did not only reveal his personal convictions concerning the nature of the State and the nature of its legal system; he also courted the conservative segments of society when the Transitional Council was still vulnerable, looking for popular support that could grant the Council legitimacy in managing the transitional period. This example shows that women are always among the first to be targeted in times of trouble.

The debate that took place around the role of religion in the State during the process of drafting or amending the constitutions in Arab countries, reveals an intellectual schism amongst their respective social components. On the one hand, there has been a conservative segment in the society that advocates for the institutionalisation of the Islamic identity in the State and its system of governance. On the other hand, there has been a modernist segment that advocates for a secular State and the institutionalisation of political power and the rule of law. A secular State that is based on the free will of the people from all denominations, regardless of their sex, religion, and origin, amongst other considerations. This schism has in particular been reflected in the outputs of the constitutional processes. In fact, a reading of the constitutions under this study, illustrates the absence of a strict and clear distinction between the religious and the political. All the constitutions under study, with the exception of the Tunisia,<sup>140</sup> have emphasised the direct link between religion and the State, in which the latter bases its rules and laws on the former. Moreover, the provisions related to Islam and Sharia law have been attached to provisions and concepts which reflect the confusion and hesitation of the committees in charge of drafting the constitution. This hesitation was caused by the fact that the constitution drafters were faced with a divided society undergoing cultural transformations. A

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139 See Abdel Ilah Belkaciz: *Why did the religious nature win over the Arab Spring? Arabs between the problems of the past and the problems of change: four years of Arab spring*, al-Fikr al-Arabi foundation, (Beirut 2014), p. 153-165.

140 Article 1 of the Tunisian constitution issued on the 27<sup>th</sup> of January 2014 reads that: "Tunisia is a free, independent, sovereign State; its religion is Islam, its language Arabic, and its system is Republican." The National Constituent Council as well as the Council that drafted the Tunisian constitution in 1959 avoided on purpose the formula of "Tunisia as an Islamic State" and the formula of "Tunisia is a State of Islamic religion". The defenders of the separation between the State and religion in Tunisia consider that avoiding these two formulas is not spontaneous, it rather aims at avoiding any interpretation of Article 1 as an article that acknowledges Islam as the religion of the State. What supports this is the debate that took place within the National Constituent Council upon the discussion of the draft constitution of January 2013. Article 141 of this draft stipulated that "No constitutional amendment may touch [...] Islam considering that it is the religion of the State [...]." The opposition within the Council rejected strongly this formula as well as many of the components of the civil society, recalling that the revolution did not take place with the goal to install an Islamic State and that such an article is contrary to Article two of the same draft which acknowledges that Tunisia is a civil State, so this paragraph of Article 141 of the draft constitution was abandoned, which indicates that it has been agreed that Islam is not the religion of the State and its institutions, it is rather the religion of the Tunisian society.

minority of people, sought to establish a system in which religion was to be relegated to the private sphere and subject to individual choice, not to the authority of the State. The majority however was still attached to a system in which the State is a guarantor of religion, hence exercising authority over the private. These concepts and provisions are based on the principle of Islam being the religion of the State, and Sharia being a source of law that regulate the civil nature of the State, democracy, and the universal system of human rights. Article 2 of the Iraqi constitution of 2005 states that: *“Islam is the official religion of the State and is a foundation source of legislation. No law may be enacted that contradicts the established provisions of Islam”*. The following paragraphs also states that: *“No law may be enacted that contradicts the principles of democracy. No law may be enacted that contradicts the rights and basic freedoms stipulated in this constitution.”* Article one of the 2014 Tunisian constitution reads as follows: *“Tunisia is a free, independent, sovereign State; its religion is Islam, its language Arabic, and its system is Republican.”* It is a formula that differs from the aforementioned constitutions.<sup>141</sup> Article 2 states that: *“Tunisia is a civil State based on citizenship, the will of the people, and the supremacy of law.”* However, Article 6 reads as follows:

*“The State is the guardian of religion. It guarantees freedom of conscience and belief, the free exercise of religious practices and the neutrality of mosques and places of worship from all partisan instrumentalisation. The State undertakes to disseminate the values of moderation and tolerance and the protection of the sacred, and the prohibition of all violations thereof. It undertakes equally to prohibit and fight against calls for Takfir and the incitement of violence and hatred.”*

Article 1 of the Egyptian constitution of 2014 states that: *“The Arab Republic of Egypt is a sovereign State, united and indivisible, where nothing is dispensable, and its system is democratic republic based on citizenship and the rule of law.”* Article 2 states that *“Islam is the religion of the State and Arabic is its official language. The principles of Islamic Sharia are the principle source of legislation.”* In addition, Article 3 adds that *“the principles of the laws of Egyptian Christians and Jews are the main source of laws regulating their personal status, religious affairs and selection of spiritual leaders.”*

Furthermore, Article 3 of the Moroccan constitution mentions that: *“Islam is the religion of the State, which guarantees to all the free exercise of beliefs.”* In Article 10 it states that: *“The man and the woman enjoy, in equality, the rights and freedoms of civil, political, economic, social, cultural and environmental character, enounced in this Title and in the other provisions of the constitution, as well as in the international conventions and pacts duly ratified by Morocco and this, with respect for the provisions of the constitution, of the constant values of the Kingdom and of its laws.”*

The Moroccan constitution acknowledges in the second paragraph of Article 1 that these are the constant values on which the Nation is based. The use of the term “Nation” instead of “People”, is indicative of the comprehensive values that form an integral part of the nature of tolerance in the Islamic religion, the multifaceted national unity, the constitutional monarchy and the democratic

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141 See footnote 139.

choice. Therefore, they are constant values that carry the same ambiguity and hesitation between religious and secular values that can be found in other instances of the constitutional text.

Islam is accorded the same place in the constitutions of Algeria,<sup>142</sup> Jordan,<sup>143</sup> Syria<sup>144</sup> and the Libyan draft constitution.<sup>145</sup> The Lebanese constitution defines the Lebanese people as a group of communities.<sup>146</sup> This oscillation between a Muslim identity and values on the one hand, and principles of democracy, universality of human rights and equality on the other, has several consequences on State institutions. It also raises a number of concerns. Except for the Tunisian example, these constitutions have given Islam a primary status, whether in terms of its relationship with the State or, as one of the sources of legislation. They have also given Islam supremacy over other religions, which may be justifiable in countries that are predominantly Muslim, like Morocco, Algeria, Tunisia and Libya. However, this is problematic when taking principles of equality in rights, duties and freedoms into account, such as multi-sectarian countries like Lebanon, as well as countries that have considerable religious minorities like in Egypt, Syria, Iraq and Jordan. Second, the adoption of Islam as the religion of the State has an impact on the structure of State institutions. All the constitutions under study have set as a condition that the religion of the head of the State - whether a King or a President of the Republic - shall be Islam.<sup>147</sup> Some constitutions even go further in requiring from the members of the legislative power (Chamber of Deputies and Senate), and members of the Government to be Muslim, as it is the case in the Libyan draft constitution.<sup>148</sup> This is a clear repression of the principle of equality of all citizens. Non-Muslim women and men are deprived from accessing top positions of power. This is contrary to religious freedom because the choice of the citizens, whether women or men, will have a direct impact on the rights that they will enjoy.

The constitutional status of religion does not only affect the principles of equality and freedom of conscience and religion. Because of the discrimination it generates, it may also undermine national unity. Citizenship alone can unify the ranks of all the components of society, but making a distinction between citizens on the basis of cultural and religious identities could lead to divisions and resentment. The latter is proven by the wars that have taken place in countries such as Libya, Syria

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142 Article 2 of the Algerian constitution: "Islam is the religion of the State"

143 Article 2 of the Jordanian constitution: "Islam is the religion of the State"

144 Article 3 of the Syrian constitution: "The religion of the President of the Republic is Islam; Islamic jurisprudence shall be the main source of legislation".

145 Article 6 of the Libyan draft constitution: "Islam shall be the religion of the State, and the Islamic Sharia shall be the source of legislation".

146 We can take the example of Article 95 of the Lebanese constitution which deals with the representation of the religious community in the parliament and in the executive. We can also refer to Dr. Mohammad Al Majdub's, "The constitutional law and the political system in Lebanon."

147 For example, Article 74 of the Tunisian constitution "Every male and female voter who hold Tunisian nationality since birth, whose religion is Islam [...]" and Article 87 of the Algerian constitution that reads: "to be eligible for the Presidency of the Republic, the candidate should be a Muslim"

148 Article 69 of Libyan draft constitution: "Candidates for the membership of the House of representatives shall be Libyan, Muslim, not possessing any other nationality [...]"; Article 76: "Membership of the Senate shall follow the same conditions as membership to the House of representatives. A candidate shall not be younger than forty years old[...]"; Article 113 "The Prime minister or the minister shall be a Libyan Muslim and possess no other nationality [...]"

and Iraq, whose democratic constitutional transition have gone off track. Adopting the Islamic Sharia and its jurisprudence (fiqh) as one of the sources of legislation, or its main source, as is the case in Egypt, Syria, Iraq and Libya, raises the issue of coherence between the universal nature of the human rights system and the requirements of Sharia law and fiqh. The latter is a system that is confusing in terms of features and content, because it differs from one sectarian system to another, even from one jurisprudential scholar to another. The two systems are contradictory particularly in terms of the rights of women and gender equality - whether on a family level (such as the right to marry a non-Muslim man) or equality in inheritance and custody over children. This contradiction can also be found in the public sphere. For example, the right of women to occupy leadership positions in the State, including the head of the State and senior positions in the judiciary, may differ in the two systems. There have also been some indications and several examples of obstacles to women's rights and freedoms, established by the international human rights system, when such rights have been confronted with the requirements of Sharia law. In such situations, conformity with Sharia law will determine whether the rights and freedom in accordance with universal criteria are accepted or rejected.

The Tunisian experience is a good starting point. It has already been noted that its constitution does not include any mention of the Sharia as one of the sources of legislation. It has adopted the least strict formula as far as the relation between the Islam and the State is concerned. The President announced on August 13<sup>th</sup>, 2017<sup>149</sup> his support of gender equality in inheritance. Furthermore, he called on the government to withdraw the Ministerial Decree prohibiting Tunisian women from marrying non-Muslim men which gave rise to a heated debate.<sup>150</sup> The proposal was presented by the President as a step towards the implementation of the constitution and its provisions on gender equality. This would require that women would be empowered to enjoy equal inheritance rights as well as the right to choose their spouses freely, just like Tunisian men. The announcement provoked many Tunisians, women and men alike. They referred to the preamble of the constitution,<sup>151</sup> Article 1, denouncing the proposal which in their view was contrary to the teachings of the religion. In addition, groups of Ulemas and the Scientific Council of the Zaytuna University issued a statement calling on the President to retract his decision. Reactions such as these show that any hesitation to acknowledge explicitly the full separation between the State and the religion will leave the door open for a return to the rule of Sharia law. The rights of women will therefore remain hostage to Sharia law and to enlightened interpretations.

The same conclusion can be drawn from constitutions that have only adopted the Sharia law as a source of legislation, even if it is not explicitly mentioned that laws may not be enacted if in

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149 It was on the occasion of women's day which is the anniversary of the issuance of the personal status code issued on the 13<sup>th</sup> of August 1956.

150 This decree was issued by the Ministry of Justice in 1973; it is a decree that ordered the civil status officers and notaries, who are the only ones entitled by the law to make contracts, to refuse to marry a Tunisian woman to a non-Muslim.

151 The preamble of the Tunisian constitution reads that: "We, the representatives of the Tunisian people, members of the National Constituent Assembly... expressing our people's commitment to the teachings of Islam and its aims characterized by openness and moderation [...]"

contradiction with the provisions of Sharia law. Such acknowledgement in the constitution, which is the highest of the legal texts of the State, may promote Sharia law to the highest ranks and consequently, become an entry point whereby any law that is found to be in contradiction with its provisions might be considered as contrary to the constitution itself. A constitutional court may effectively be transformed from a court that checks the constitutionality of the laws into a court that checks the 'legality' of the laws, that is, their compliance with Sharia law.

Another example of the inclusion of the religious criterion in the rights and freedoms of women is the Egyptian constitution of 2012. Article 10 considers that the family is the foundation of society. It is based on religion, morality and patriotism: *"The State and the society shall commit to the authentic character of the Egyptian family and protects its cohesion and stability, and the consolidation of its values, as foreseen by the law [...]".* Libya has also followed suit. Article 27 of the draft constitution includes a reference to the founding principles of the family: religion and morality. Adopting concepts of religion, morality and authenticity as bases for family and referring them to legislation to define them and consequently regulating family life, leaves the door open to interpretations that may be flexible and liberal, or conservative, if not reactionary and injunctive. The same Article in the 2012 constitution has been amended in the 2014 constitution. The amendment however has only been partial: it has removed the issue of "authenticity", but have preserved the foundation of the Egyptian family as based on "religion, morality and patriotism". This gives space for conservative interpretation that deprives women of their freedom of movement and choice of the life that they want for themselves and for their family.

The same tendency appears in paragraph 2 of Article 6 of the Jordanian constitution relating to the family. It presents the family as the basis of society, the core of which shall be religion, morality and patriotism. Regardless of the fact that perspectives on moral values differ in space and in time, and from one person to another, linking family to religion will have direct repercussions on the status of the woman in the family. It will have an impact on her relationship with her father, her brother, her husband and even her sons in all affairs related to custody, marriage, divorce, guardianship, amongst other. Such a status does not elevate her to the level of a fully-fledged citizen. Rather, it confines her under the guardianship of male members of her family.

The Moroccan constitution raises the same problems. They are issues resulting from an oscillation between provisions that refer to religious grounds for power and society, and provisions that refer to universal human rights principles. The oscillation demonstrates a degree of dithering and manipulation by some political actors and social groups. Although the constitution does not explicitly mention Sharia as a source of law, Article 41 states that:

*"The King, Commander of the Faithful, protector of the country and of religion. The King Amir Al Mu'minin presides over the Superior Council of the Ulema charged with the study of questions that he submits to it. The Council is the sole instance enabled to comment on the religious consultations (fatwas) before being officially agreed to, on the questions to which it has been referred and this of the tolerant principles, precepts and designs of Islam."*

Article 42 adds that:

*“The King Head of State, Supreme representative, Symbol of the unity of the Nation, [...] sees to the respect of the constitution, to the good functioning of the constitutional institutions, to the protection of democratic choice and of the rights and freedoms of the [male and female] citizens”.*

The link between Article 41 and Article 42 raises the question with regards to how the protector of the country and religion shall look at the rights and freedoms of (female and male) citizens when considering that the Superior Council of the Ulemas<sup>152</sup> has a consultative function. It is up to the King alone to ask for the advice of this Council on any issue, whether on the draft laws, or international conventions that the Kingdom of Morocco is considering to join or to ratify. The Council may probably decide the extent to which they are in compliance with the “principles and provisions of the Islamic religion”. Through the role of the royal establishment in the legislative field, the Moroccan constitution has introduced Islamic Sharia to the State’s legal system in an indirect way. The establishment has maintained part of the Dahir power<sup>153</sup> for the King as well as his influence in the field of international relations, since he signs and ratifies the international conventions, because of his right to ask for the advice of the Superior Council of the Ulemas in any field. This is despite the necessity for the parliament to intervene in conventions related to the rights of citizens.<sup>154</sup>

The grave implications of this intertwining between religion and State, and between religion and political power, are not limited to the structure of institutions and the conditions that need to be met by State officials. They also encompass the relationship between female and male citizens, as well as the relationship of female citizens with each other. In this regard, there are many common denominators that exist between countries with a sectarian nature or several religious minorities. Such countries have abandoned citizenship as a criterion for defining their citizens, choosing instead the Milla (school), or the religion. They have chosen to create multiple legal systems with parallel courts for each religious community, particularly for affairs relating to personal status. This is present in Article 41 of Iraqi constitution, despite strong opposition from feminist activists of its inclusion. The Article reads: *“Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs or choices, and this shall be regulated by law.”* Similarly, the Syrian constitution acknowledges in Article 3(4) that *“the personal status of religious communities shall be protected and respected”*. This is despite of the conclusive remarks by the UN Committee on the Elimination of Discrimination Against Women written in the 2014 periodic report of the Syrian Arab Republic.

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152 *The Moroccan constitution has given this appellation on purpose to a body that is in truth and by the nature of its structure and functions an Islamic Council or a Sharia Council, in order to introduce the modernistic aspect in a society that is attached to the notion of secular State and which asks for the separation between the religion and the powers.*

153 *The Dahiras in the Moroccan legal system represents rules that are the prerogative of the King and have the power of laws.*

154 *Article 55 of the Moroccan constitution: “The King accredits thee ambassadors to foreign States and to the international organisations. The ambassadors and the representatives of the international organisations are accredited to him. He signs and ratifies the treaties. However, the treaties of peace or of union or those which engage the finances of the State or the application of which necessitate legislative measures, as well as those treaties relative to the individual or collective rights and freedoms of the citizens [feminine] and citizens [masculine], may only be ratified after having been previously approved by the law.”*

The report expressed concern of the Syrian authorities' insistence of including this text, which they argued may reproduce and support discrimination against women rather than eliminating it.<sup>155</sup>

The Kingdom of Jordan also follows suit. Its legal system does not have one only court system but is fragmented into several. Article 99 states that *"the courts are of three types: 1) civil courts, 2) religious courts, and 3) special courts."* Furthermore, Article 105 considers religious courts: *"the Sharia courts alone shall have the jurisdiction – in accordance with their own laws – in the following matters: 1. Matters of personal status of Muslims. 2. Cases of blood money (Diya) if the two parties are both Muslim or one of the parties is not a Muslim and the two parties consent to that the right of jurisdiction be for the Sharia courts. 3. Matters pertaining to Islamic Waqfs."* And according to Article 106, *"Sharia courts shall in their jurisdiction apply the provisions of the Sharia."*

The Lebanese constitution has even went as far as defining the Lebanese people not as one entity, but as a group of sects. A customary rule was instituted and political and administrative responsibilities were distributed on the basis of this sectarian perspective of the State towards the society. All of the Lebanese religious communities, that is, the 18 religious sects, are given the prerogative to manage the personal status affairs of their members. This means that Lebanese women have been subjected to different family laws according to their religious and/or sects they belong to.<sup>156</sup> The constitutional articles relating to these have had serious repercussions on women.<sup>157</sup> They have imposed restrictions on the choice of the marriage system as well as the choice of the husband. Though provisions differ between religions, many religious denominations are still restricting choices of women. Another constraint as to the right and freedom of choice in marriage and in choosing a husband is that the mother does not enjoy the right of custody over her children in most of the Lebanese religious sects, be it Christian or Muslim. The discrimination relates to custodianship over the children during marriage which is granted to the father. It is prohibited to the mother even when she is the guardian of her children, except for keeping the children and raising them until the end of the guardianship period. The Armenian Orthodox Church is an exception to this rule; its laws grant the right to exercise custodian power equally to both the father and the mother. In addition, there are other aspects of exclusion and discrimination in everything that is related to rights of women within the family.

Those constitutions that have adopted the sectarian choice have widened the scope of discrimination. It is no longer only discrimination against women; it also includes discrimination among women. This stems from the fact that every category of women shall be referred, as far as family law is concerned, to a legal system that is proper to the religious sect or the Milla to which the concerned group belongs. This potentially weakens the cohesion and solidarity among women due to their different

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155 CEDAW/C/SYR/CO/2, 24 July 2014.

156 *Study of regulatory needs for promoting women's participation in the political parties and the trade unions in Lebanon. The study presented within the regional project on "the promotion of the role of political parties and trade unions in the improvement of women's political and public participation", EU-funded project executed in Lebanon by the Lebanese Women Democratic Gathering, in partnership with Oxfam (Beirut, 2104), p. 32.*

157 See *Lebanon report to the Committee on the elimination of discrimination against women, two periodic reports four and five, UN, CEDAW/C/LBN/4-5, May 20<sup>th</sup>, 2014*

legal and thus social status. Specifically, it relates to the different interests and different parties these women would be facing in their struggle, and when presenting their demands and requests.

Even if only applied to personal status laws, institutionalising religion and religious sects as a legal reference opens the door for religious classes to control other social classes which are sanctioned by the State.<sup>158</sup> This has direct implications on the chances for women to be present in the public sphere and participate in the political field, even when this kind of participation is guaranteed by the constitution.

What is the credibility and status of a woman who runs for functions such as the head of State (provided that the constitution allows this), or head of Government, minister, and judicial function, but does not have the freedom to choose her husband and to have custody over her children? How would this matter when she is not allowed to travel without an authorisation from her father, husband, or her legal guardian? We should not be deceived by thinking that religious authority is restricted to the private sphere. The structure of society is an extension of the structure of the family. The more the latter is balanced and based on the dignity of each individual and on equality between its two heads, i.e. the mother and the father, the more the society is balanced, cohesive and prone by nature to seeking equality amongst all its components.<sup>159</sup>

### **Third criterion: The status of international law and international covenants** <sup>160</sup>

International human rights law constitutes the major point of reference with regard to the rights of women. This is so not only because they offer a universal approach to civil, political, economic, social, cultural and environmental human rights, but also because they present a discourse that is supreme and that overrides the cultural specificities of societies. They link these rights to the humanity of the individuals, not to their origin. Therefore, the status that is occupied by international treaties and conventions related to human rights, and in particular the rights of women in the legal systems in the countries under this study, is an important indicator in exploring the extent to which the State is committed to the protection of women.

The Arab States' relationship with international law is characterised by prudence and caution by both the authorities and the society, especially the conservative social segments. They often regard international law as a body of provisions drafted and set up by hegemonic forces active in the international community, in particular the Western powers. These provisions are seen as denying, and sometimes distorting, cultural specificities of the Arab and Islamic regions. They seek to repress

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158 *Rustum Mahmud, 'The situation of the Syrian woman under the Baath era: story of the soft control' أحوال المرأة السورية في العهد البعثي، سيرة السيطرة للناعمة*, published in: "Women's rights in Syria before and during the revolution: Rhetoric and facts Program on information about the civil society in Western Asia". الخطاب والواقع. *حقوق النساء في سوريا قبل وأثناء الثورة: الخطاب والواقع*, special edition, May 2<sup>nd</sup>, 2014, p.7

159 *On the reflection of the family structure on the social and political structure*, see E. Todd, 'L'invention de l'Europe', Seuil, (Paris 1990).

160 See S., Suteu, I., Draji, op. cit. Chapter 2: "Why are States legally obliged to gender their constitution"

them by way of purposefully globalising their own Western values. The effects of these concerns are clear when looking at the status the Arab States have granted to international law.

The constitutions that have been examined in this study involve two different positions vis-à-vis international law. They are either completely silent on the status of international treaties and conventions that are approved and ratified within the legal system of the State, despite the mention of competent authorities entitled to enter into such treaties. Alternatively, they are mentioned but are subject to conditions. The first position is found in constitutions such as the Egyptian constitution of 2012, and the Syrian constitution of 2012. Both constitutions do not give any indication of the status of the international treaties and conventions in domestic law, an absence that may not be unintentional. In Egypt, certain extremist Islamist forces solemnly opposed the mentioning of international conventions. In Syria, this absence was raised by one of the members of the drafting committee. The member in question was a professor of international law yet his proposal was ignored, and the constitution was issued with this gap. Because of the position vis-à-vis international law, it is difficult to match national criteria for guaranteeing and protecting human rights and gender rights with international standards. This type of silence with regards to the status of international law in the domestic legal system does not exempt these countries from their international responsibilities concerning the commitments that they have to the treaties and conventions they have approved. Yet, the silence indicates a suspicion towards these commitments, and a prior intention to ignore their substance. It is worth noting that most of the Arab States have ratified, before the Arab revolutions, the major treaties and conventions related to human rights. However, the totalitarian regimes in these countries have mostly ignored them.

The second position taken by constitutions (and the most widely spread), is that of States whose constitutions define an explicit position for these treaties and conventions in domestic law. For example, the Egyptian constitution of 2014 acknowledges in Article 93 the commitment of *“the State to the agreements, covenants, and international conventions of human rights that were ratified by Egypt, which shall have the force of law after publication in accordance with the specified circumstances”*. It means that these conventions do not need laws to be triggered domestically, rather, they are automatically applied as soon as they are adopted. In the Algerian constitution, there is a similar acknowledgement. The constitution does not only acknowledge the commitment to international treaties and conventions, but also clarifies their position within the legal system of the State. Article 150 stipulates that *“the treaties ratified by the President of the Republic in the conditions specified by the constitution shall prevail over Acts of Parliament.”* While it is true that the Article acknowledges the binding character of treaties and agreements, the constitution does not contain clear and explicit provisions that allows for individuals to rely on them and to defend their rights before competent judicial authorities. The UN Committee on the Elimination of Discrimination against Women have already mentioned that the international treaties such as the CEDAW enjoy according to the Algerian constitution, supremacy over the domestic law. But the CEDAW committee *“reiterates its concern about the lack of clarity as to the possibility of immediately implementing the convention and its supremacy over the national laws.”*<sup>161</sup> The Committee addressed a question to

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161 Conclusive remarks of the committee on the elimination of discrimination against women. Algeria. Fifty first session, 13<sup>th</sup> of February- 2<sup>nd</sup> of March 2012. See the UN document: CEDAW/C/DZA/CO/3-4

the Algerian Government in this regard, to which the government replied that: *“the Algerian courts have not yet implemented the provisions of the Convention, because these courts have not heard any case related to the provisions of this Convention.”*<sup>162</sup> This response from the Algerian government raises a real problem not only in Algeria but also in the Arab countries in general. Except for a few lawyers that are active in the field of human rights, there is a lack of well-trained lawyers in the field of international law, and especially in the field of the international human rights law. Therefore, cases are rarely based on the international commitments of their respective countries.

Compared to the Algerian constitution, the Tunisian constitution has undertaken an additional step forward. There was a lengthy debate at the Constituent National Council among members who were in favour of international laws, and those who were more cautious and wanted to find ways to object to some of the international commitments Tunisia had made. These were mainly three Islamic and nationalist forces within the Council.<sup>163</sup> Following the debate, a somewhat weak solution was reached. Article 20 of the constitution established that the international treaties that are ratified by the parliament have supremacy over the laws. This is very important in order to prevent the legislative power from enacting laws that contradict the international conventions Tunisia has approved or adheres to. The Article adds that these treaties are less important than the constitution, a stipulation not made by the Algerian constitution.

It is an unfortunate addition because if it means that treaties that precedes the adoption of the 2014 constitution, (which some would consider as contrary to this constitution), would not be binding for the Tunisian State. This would be in contradictions with the provisions of the Vienna Convention on the Law of Treaties (VCLT), ratified by Tunisia. The VCLT stipulates that no State may ignore the international commitments it has taken on or upon ratification of the international conventions claiming that they are contrary to its domestic laws.<sup>164</sup> As for the conventions that will be ratified by Tunisia in the future, this additional provision is meaningless. The Constitutional Court in accordance with Article 120 of the constitution shall assess the compliance of these treaties with the constitution before approving them. Therefore, if a treaty were to be found contradictory with the constitution, the States would have to decide either to abstain from approving it, or to amend the constitution in such a way as to comply with it. Only then can the State approve the treaty.

The final example that should be mentioned here, are the articles found in the Moroccan constitution that pertain to the status of international law in the national legal system. They are a very good manifestation of the inconsistency of the Arab Islamic regimes as to the issue of human rights as being comprehensive and universal in character. The Moroccan constitution makes an audacious step towards the recognition of the universality, indivisibility, and interdependence of human rights.

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162 CEDAW/C/DZA/Q/3-4/Add.1 - January 9<sup>th</sup>, 2012.

163 This reservation is essentially found with the deputies of the Ennahda, who undertook a tough campaign against the CEDAW especially after the transitional government announced before the constituent elections the lifting of the reservations made by Tunisia to this Convention upon ratifying it, claiming that this is a Convention that prepares for the recognition of the rights of homosexuals.

164 This is what comes under Article 27 of this Convention.

It acknowledges the Kingdom's commitment to human rights principles as stated in international covenants and agreements. This is clearly stipulated in the preamble<sup>165</sup> of the constitution and in Article 19.<sup>166</sup> However, immediately after the acknowledgement, it sets a ceiling for the implementation of these rights that cannot be breached or exceeded. Namely, the basic components of the deep rooted national identity. The same constitution acknowledges in its preamble that the Islamic religion enjoys supremacy. The Moroccan constitution focuses on the constant values of the Kingdom and the supremacy of Islam. This is a backward leap where religious rules and criteria prevail. It goes without saying that the rights of women and equality between women and men are the most vulnerable to these religious constraints. Consequently, the position of the Moroccan constitution vis-à-vis international law relating to human rights manifests the same double standards as found in all other Arab constitutions that have made attempts to achieve a compromise between two world views. The result is a constitutional text that is not purely religious and conservative, as was the desire of some groups in society, nor does it succeed in effecting a separation between the State's political and legal systems from the grip of religious identity.

This hesitation of authorities can only support the conservative and even reactionary forces in Arab societies that hinder general and gender rights movements and campaigns aimed at giving women their rights laid out by international agreements and conventions. The weaker the legitimacy of authorities, the more they will seek to acquire support from one party or another, regardless of whether they have reached power or practice their power non-democratically. The hesitation involves the adoption of policies that satisfy the most radical social forces. Such forces continue to grow in power, and they are increasingly becoming more self-confident due to the support and consent from authorities. Consequently, the rights of women remain hostage to both forces: authorities and radical social forces.

#### **Fourth criterion: Equality and non-discrimination**

The first three criteria - gendered language, religion-State relationship, and the status of international law - are all placed in a spectrum of extreme ends that fluctuate and remains non-static in the various constitutional texts. They may convey a complete absence of a gender-sensitive perspective or the presence of it. The same applies for gender equality and non-discrimination. They are found in different levels of intensity. Assessing the extent to which they are safeguarded will thus help in an accurate analysis of how gender sensitive the constitutions are.

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165 *The preamble of the Moroccan constitution states: "The Kingdom commits itself to give the international conventions duly ratified by it, and within the framework of the provisions of the constitution and of the laws of the Kingdom, within respect for its immutable national identity, and on the publication of these conventions, primacy over the national legislations of the country and to harmonise these legislations with the requirements of such ratification".*

166 *Article 19 of the Moroccan constitution reads: "The man and the woman enjoy, in equality, the rights and freedoms of civil, political, economic, social, cultural and environmental character, enounced in this Title and in the other provisions of the constitution, as well as in the international conventions and pacts duly ratified by Morocco and this, with respect for the provisions of the constitution, of the constant values of the Kingdom and of its laws."*

## Equality

It is interesting to note that all the examined constitutions recognise equality before the law. However, not all recognise equality in terms of rights and obligations. While these are two different, though intertwined principles, some constitutions confuse equality before the law and equality in the law, which means equality with regards to rights, freedoms and obligations.

The Iraqi constitution of 2005 for example, states in Article 14 that: *“Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status.”* Equality before the law does not necessarily guarantee equality in the rights enjoyed. Laws that grant women half the inheritance of what is granted to men, and laws that impose on women a duty to obtain approval from their legal guardian to travel abroad, are laws that deprive women of their full equal rights with men. However, all women are equal by virtue of these laws which equally applies to all women. In other words, women, though not equal with men, are equal as women before these discriminatory laws.

The Jordanian constitution mixes equality in rights and obligations and equality before the law: both fall under the same article, even the same sentence. Article 6 reads that *“Jordanians shall be equal before the law no discrimination between them in rights and duties even if they differ in race, language or religion.”* Similarly, the constitution of Tunisia has adopted the same mixing of the two principles. Article 21 states that *“all citizens, male and female, have equal rights and duties, and are equal before the law without any discrimination [...]”*

It is worth mentioning that the Algerian constitution distinguishes between equality before the law in Article 32, and equality in rights and obligations: *“The citizens shall be equal before the law without any discrimination on the basis of birth, race, gender, opinion or any other personal or social condition or circumstances.”* Equality in rights and obligations is mentioned in Article 34: *“The institutions shall seek to ensure the equality of rights and duties of all citizens [...]”*

The difference between the 2012 and 2014 constitution in Egypt demonstrates that acknowledging equality between women and men in terms of rights and freedoms, and equality before the law is neither guaranteed nor can it be taken for granted. In fact, the matter remains subject to the nature of the political authority in power. The 2012 constitution, also known as the Muslim Brotherhood’s constitution, did not include a reference to gender equality and non-discrimination. The 2014 constitution redressed the situation and recognised both principles. Article 11 in the 2014 constitution reads as follows: *“The State guarantees equality between men and women in all civil, political, economic, social and cultural rights as per the provisions of the constitution [...]”*

The weakness related to the lack of distinction between equality in rights, duties and freedoms and equality before the law is exacerbated by the fact that some constitutions use only equality between citizens or in the best cases, equality between [female] and [male] citizens, without mentioning equality between women and men explicitly, except for the Egyptian and Moroccan constitutions. Article 19 of the Moroccan constitution acknowledges that *“the man and the woman enjoy, in*

*equality, the rights and freedoms of civil, political, economic, social, cultural and environmental character [...].”*

The problem is not in the general nature of the recognition of the principle of equality. It is rather about the parties included in the equality provision: is it equality among citizens? Which citizens are included here, given that the word is masculine and refers to men? Is it equality between female and male citizens, or between women and men as individuals? Every term leads to different consequences which might result in the adoption of a narrow interpretation that may exclude women. Going back to the importance of engendering the language of the constitution, it is noteworthy to recall that the principle of equality between women and men remains fragile and vulnerable to differences in interpretations, political and social circumstances, and rights and freedoms that are disputed. These remain as long as women, or at least female citizens, are not addressed directly and clearly when the constitutional text refers to these rights and freedoms. Nonetheless, the effective recognition and implementation of equality between female and male citizens, or between women and men in most of these constitutions, remain depending on the State's identity which, in turn, refers it back to Islam. This could end up emptying any broad recognition of equality of its substance.<sup>167</sup>

### **Non-discrimination**

It is true that non-discrimination is mentioned in most constitutions, but it is not clearly mentioned in all. In some instances, the principle of non-discrimination has been mentioned, not in terms of rights, freedoms and duties, but in terms of equality before the law as provided for by Article 21 of the Tunisian constitution. It was accidentally mentioned at the end of Article 21 without acknowledging that all types of discrimination shall be prohibited, or enumerating the types of prohibited discrimination, i.e. gender (sex), race, religion, language, origin, ideas or disability. Since the principle of non-discrimination was not mentioned in the Tunisian constitution explicitly in the title on rights and freedoms, the Constitutional Council that drafted the constitution, did not find it embarrassing to reflect this discrimination in the aforementioned Article 74 on the conditions applicable to presidential candidates excluding non-Muslims.

Article 74 of the constitution is in total opposition with Article 21. In fact, having such discrimination established in the heart of the constitution itself, may serve as a basis used by legislators in the future to enact discriminatory laws in terms of rights, freedoms and obligations.

The Jordanian constitution as amended in 2011 is also weak in terms of non-discrimination. Article 6 reads that “*Jordanians shall be equal before the law with no discrimination between them in rights and duties, even if they differ in race, language or religion.*” When this Article tackles the issue of non-discrimination in rights and duties, it mentions “*race, language and religion*” as considerations on the basis of which there should not be any discrimination. It does not mention gender. The constitution does not add a sentence indicating that the enumerated prohibited types of discrimination are illustrations, and that the list is non-exhaustive so that the bodies in charge may consider other

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<sup>167</sup> Cf. the paragraph on the religion-State relationship and the one on the status of International Law.

discriminations, including gender. The first paragraph should have at least stipulated that *“Jordanians shall be equal before the law with no discrimination between them in rights and duties even if they differ in race, language or religion, or for other considerations.”*

The Iraqi constitution can be commended in this regard. It did not only recognise equality and non-discrimination, but it explicitly provides for the prohibition to discriminate based on sex. Article 14 reads that *“Iraqis are equal before the Law without any discrimination on grounds of gender, race, nationality, origins, color, religion, confession, belief and opinion, economic or social status”*. Nevertheless, it is as weak as the Tunisian constitution insofar as it acknowledges equality and non-discrimination before the law, but not in rights and obligations. The Iraqi constitution granted both mothers and fathers, equally, the right to give their children the Iraqi nationality. In fact, Article 18 provides for the right of every child born from an Iraqi mother or father to obtain nationality. The right of a mother to grant nationality to her children has always caused political strife and divisions in Arab States to the extent that some constitutions refer the matter to legislators when it has become an obstacle to the drafting of the constitution, and when consensus is found to be impossible to reach. Article 10 of the Libyan draft constitution is a case in point. The Article reads that *“the law regulates granting and withdrawing nationality [...]”*.

The equal rights of mothers and fathers to grant the Egyptian nationality to their children are provided for in Article 6 of the Egyptian constitution of 2014: *“nationality is the right of whoever is born of an Egyptian father or mother [...]”*. Nationality is still one of the most important demands of women’s rights movements in the Arab region.

As for the Syrian constitution, even if it has merged the principle of equality in rights and duties with the principle of non-discrimination, it mentions in clear terms the bases for which discrimination cannot be accepted, including the prohibition of discrimination on the basis of gender. Article 33 states that *“citizens shall be equal in rights and duties without discrimination among them on grounds of sex, origin, language, religion or creed. The State shall guarantee the principle of equal opportunities among citizens.”*

### **Fifth criterion: Mechanisms and guarantees for the implementation of the constitution**<sup>168</sup>

Constitutional provisions that safeguard rights and freedoms, as well as equality between women and men on the basis of these rights are necessary, but not sufficient. Arab constitutions have provided for decades for a wide array of rights and obligations on paper. However, people have suffered from persecution, State violence, discrimination and exclusion, a fact which explains the recent uprisings and revolutions. Therefore, in addition to the provisions on equal rights between women and men including provisions of non-discrimination against women, it is important to pay attention to the existence of mechanisms that guarantee and protect these rights. Arab constitutions

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168 See S. Suteu, *I Draji, op. cit.*, Chapter 5: *“How to guarantee the implementation of the constitution?”*

vary significantly in this regard. Some texts completely neglect such guarantees. These are the least gender-sensitive constitutions, such as the Lebanese, Syrian and Jordanian constitutions. They are the weakest of all constitutions on the issues related to gender. This is the case despite the fact that the Jordanian constitution includes in Article 23 a mention of the adoption of mechanisms that guarantee and preserve women's rights:

*“The State shall provide women with all opportunities enabling them to effectively and fully contribute to the political, economic, social and cultural life, and the State shall work on removing the restrictions that prevent their development and participation in building society.”*

However, this recognition does not constitute for a clear and concrete mechanism for protecting the rights of women. It remains a mere political program and/or project, the implementation of which depends on the will of the ruling authority. The remaining constitutions differ in terms of using traditional general mechanisms and modern mechanisms that target women. Traditional mechanisms are represented first by the judiciary, the role of which is underlined in some new constitutions (or new editions) as to their pivotal role in guaranteeing rights and obligations. This role relies on the independence of judiciary, necessary for their protection against any intervention by political authorities, especially the executive branch of the State, which has long been used by totalitarian regimes as a tool for repressing opponents. Article 10 of the 2014 Tunisian constitution mentions in this regard the following: *“The judiciary is independent. It ensures the administration of justice, the supremacy of the constitution, the sovereignty of the law and the protection of rights and freedoms.”* Article 109 adds that any form of interference with the functioning of the judiciary is prohibited. Judges are committed to the principles of integrity and neutrality. The same formula is used in Article 120 of the Libyan draft constitution: *“The judiciary shall be independent. Its function shall be to establish justice, guarantee the rule of law, and protect rights and liberties. Judges shall be independent in performing their functions and shall only be subject to the law [...]”*

The Libyan constitution has gone further than the Tunisian constitution concerning intervention in the functioning of justice, making it under the same article, a crime to which a statute of limitation shall not apply. Article 107 of the 2011 Moroccan constitution recognises that: *“the judicial power is independent of the legislative power and of the executive power.”*

Although the judicial authority has been exempted from the possible intervention of the legislative and executive authorities, the King has remained the guarantor of the judicial authority. Article 108 of the same constitution adds that judges cannot be removed or transferred unless, and in accordance with the law. However, this does not constitute a guarantee by itself. The constitution should have mentioned that the removal or transfer of judges shall only take place in accordance with a ruling by the Supreme Judicial Council, so that the King can no longer exercise discretionary power that would enable him to exercise his authority over the judiciary. Despite this weakness relating to the independence of the judiciary towards the royal authority, the constitution has included a very important text in Article 109 which acknowledges that: *“Any intervention in the matters submitted*

*to justice is forbidden. In his judicial function, the judge may not receive injunction or instruction, nor be submitted to any pressure whatever”.*

The role of the judicial power in guaranteeing the rights and freedoms and specifically enforcing equality between women and men is necessarily linked to another issue, one rarely addressed in the constitutions and the laws related to the judicial power in Arab countries. This refers to the guarantee for female representation in judicial bodies. This could play an important role, first by encouraging women to resort to justice in order to claim their rights, and second, because the nature of legal judgments may not be the same when the judge is a male or female.<sup>169</sup> In this regard, there is no mention of a quota or support to the presence of women in the judiciary, except for some provisions in the Article 46 of the Tunisian constitution of 2014, which states that the State shall guarantee the parity between women and men in all elected assemblies. Considering that the Supreme Judicial Council, the body in charge of guaranteeing the independence of the judicial power, and the good functioning of the judicial power is elected, the process of candidacies of judges has taken place in such a way as to achieve this parity. The elections of the Supreme Judicial Council have indeed taken place in Tunisia and the results of these elections led to the election of eighteen women out of 32 members. That is, more than 50% of the total number of members. In addition, the Tunisian experience shows that there is an insistence on the representation of women in the judiciary, including in its highest bodies. In this regard, Article 10 of the statute of the Tunisian Constitutional Court states the following: *“The members of the Constitutional Court shall be appointed by the Council of Representatives, the Supreme Judicial Council and the President of the Republic [...] and will strive to respect the principle of parity.”*<sup>170</sup>

In a similar context, the Moroccan constitution also provides for parity between women and men. It creates a constitutional body that is independent and in charge of ensuring parity.

It seeks to fight all forms of discrimination, in accordance with Article 164. However, the Kingdom has missed an opportunity presented. Article 19(2) relates to parity between women and men. The statute of the Kingdom’s Constitutional Court was appealed before the Constitutional Council on grounds of the non-constitutionality of paragraph Article 1(4). The statute in question calls for the respect of female representation by each of the parties in charge of appointing members of the Constitutional Court. The Constitutional Council considered, in a decision issued on the 25<sup>th</sup> of June 2014, that Article 1(4) was indeed contrary to the provisions of Article 19 of the constitution which acknowledges gender equality including calls for fighting all forms of discrimination. Article 1(4) was therefore annulled and as a result, the Constitutional Court now includes one female (out of 12 members).

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<sup>169</sup> See, G. Bauer and J. Dawuni, ‘Gender and the Judiciary in Africa, from obscurity to parity’, Routledge, 2015, see especially, M. Hamad, Egypt: ‘The Lingering Battle for Female Judgeship,’ S. Klibi, Tunisia, ‘A New Constitution and More Women Judges.’

<sup>170</sup> This is mentioned in Article 10 of the Statutes No 50 dated 3<sup>rd</sup> of December 2015 and concerning the Constitutional Court which has not been created yet and its members have not been appointed yet until the 31<sup>st</sup> of August 2017.

Rights and freedoms, and guarantees of the principle of equality between the genders are entrenched in a number of constitutions. This means that such rights cannot be narrowed down or retracted. This guarantee is very important because it protects the system of rights and freedoms from the rule of the majority which can take power even if this majority reaches power through elections. This majority may through ideological or political allegiances, amend the constitutions in such a way as to undermine rights and freedoms. The Tunisian constitution mentions in its Article 49 last paragraph that: *“no amendment may undermine the human rights and freedoms guaranteed in this constitution.”* Similarly, the Moroccan constitution acknowledges in Article 175 under Title 13 concerning the review of the constitution that: *“No revision may infringe the provisions relative to the Muslim religion, on the monarchic form of the State, on the democratic choice of the Nation or on [those] acquired in matter of freedoms and fundamental rights inscribed in this constitution.”*

As for the mechanisms protecting women’s rights, these pertain to the establishment of independent public bodies that are newly established in accordance with constitutional provisions. One example is the Authority on Equality and combating all types of Discrimination created under Articles 19 and 164 of Morocco’s constitution. There is also a quota, or parity mechanism, despite the controversies it caused among the bodies that have been entrusted with drafting the constitution<sup>171</sup> or within the community itself. Some countries have imposed a specific quota for example, Article 184 of the Libyan constitution sets the gender quota at 25% for Parliament and local Councils, while restricting its implementation to two parliamentary mandates under the pretext that they are discriminatory measures. They therefore cannot be accepted, except in exceptional or temporary situations, until women overcome the subordinate status which have imprisoned them because of entrenched marginalisation. Similarly, Article 180 of the 2014 Egyptian constitution provides for a 25% quota in local elected bodies, and Article 11 provides for the ‘appropriate representation’ of women in the People’s Council. This reflects the entrenched fear of women entering the political sphere alongside, and equally with men. Some constitutions have gone even further, and aimed at attaining equal representation in elected bodies. For example, Article 46 of the Tunisian constitution, Article 19 of the Moroccan constitution, and Article 36 of the Algerian constitution call for equal representation.

We can therefore see that Arab constitutions vary, not only in terms of their acknowledgment of equality between women and men in rights and freedoms, but also in terms of the mechanisms established to meet this end. However, the ability of women to change and to overcome stereotypical representations which subjugates them in Arab societies, is not merely dependent on legal provisions that guarantee gender equality and non-discrimination. In fact, what is required is a strong and genuine political will. Due to the fact that political authorities are dominated by men, it is therefore, the responsibility of rights-based movements in general, and feminist movements in particular, to effect change. Rights based movements carry a considerable responsibility because they are requested to act, today more than ever. In view of the specificity of the present historic moment, they are called upon to mobilise and raise awareness regarding the right of women to dignity, and

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171 See the Report on the Egyptian experience

freedoms in order to gain male support in exerting pressure on decision-makers to ensure that they are committed to the constitutional rights and their implementation on the ground.

Violence against women in all its forms whether material, moral, psychological, economic amongst other, constitutes one of the main obstacles for women to participate in the public sphere and political competition. The conclusions that can be drawn from these examinations of the transitional tracks in Arab countries and the constitutions they have produced reveal that the constitutional and political transition processes have not involved women as expected. Despite some gains, as the adoption of the long-awaited law on ending violence against women in Tunisia on 26<sup>th</sup> of July 2017<sup>172</sup>, women have not been able to improve their legal and social status, both of which are already fragile and unfair for them as human beings and citizens. They remain prisoners to a religious system regarded as sacred, with men controlling its features, contents and interpretations. They also remain prisoners of political regimes that are still afraid of democratisation. Therefore, it will be no surprise that ‘Women’s Spring’ is yet to come.

## CHECKLIST

### Measuring gender-sensitivity of constitutions in MENA

- **Is the language used in the constitutional text engendered?**
- **What are the direct implications that the relationship between religion and State may have on the nature of laws, and on the vision of rights and freedoms?**
- **What is the status of international law in the national legal system?**
- **Is there a presence of the principles of gender equality and non-discrimination among the provisions of the constitution?**
- **What are the mechanisms and guarantees in relation to the implementation of rights of women?**

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<sup>172</sup> It is the Statutes No 58 for 2017 dated 11<sup>th</sup> of August 2017 and concerns ending VAW. It can be accessed via the following link: <http://www.legislation.tn/sites/default/files/news/ta2017581.pdf>

## Part 3: LESSONS AND CONCLUSIONS

The transition to democracy, further to any revolution or widespread revolutionary movement, is a sensitive process that is not risk-free as it might stumble and become violent. It is also according to interviewees, a period of unprecedented momentum, despite the fear or anger that drives ambitions and heightens spirits. Though every democratic transition is unique, some lessons learnt may help avoid a few problems. Or they may serve as guidelines for the drafting of a new constitution that establishes the relationship between the State and its citizens on democratic grounds, limiting State interference, protecting rights and freedoms, laying the foundations of governance and striking a balance between the executive, the legislative and the judiciary, as well as safe-guarding gender-based justice.

In this chapter on lessons and conclusions, we seek to answer two main questions: first, what conditions should be available for the drafting of a gender-sensitive democratic constitution? Second, what are the mechanisms and guarantees for protecting the democratic process?

### A. The post-revolution constitutions: opportunities and challenges

The freedom arising from the toppling of an authoritarian regime will almost automatically lead to a surge in the formation of political parties, which reflects the enthusiasm of citizens for participation in public life. Though this is avowedly a positive phenomenon, it may not nurture the search for a common goal or encourage cooperation between political currents. It may therefore result in fragmentation and discord inside elected bodies. It may jeopardise political action and confuse both female and male voters, when faced with a crowded and un-structured parade of new political parties. This characterised the Tunisian and Egyptian political scene, where political currents were eager to establish parties and rush them into the electoral run, without securing neither the popular bases nor the institutional structures needed to guarantee real representation and participation of the people.

Moreover, the transition to democracy involves a high economic price, in addition to significant economic risks. If the economic factor is not dealt with properly, and if it is not given due attention, it could threaten the transitional process, as economic vulnerability produces disappointment and sometimes feeds nostalgia for the pre-revolution or uprising era.

Finally, the significant opening up of the political sphere in the aftermath of revolutions leads to the emergence of diverse political ideologies and currents. Some of those currents might seek to establish an oppressive regime, i.e. a regime that does not guarantee equality in general and gender equality in particular. This will constitute a great challenge for citizens who dream of freedom and democracy. These factors affect the constitution-drafting environment, which in turn affects the capacity of the society and of involved actors to achieve a fair consensus that would respond to the needs of the revolution.

**While most constitutions in the world were drafted after revolutions, wars and major political and social upheavals, it is nevertheless important to take into consideration the challenges arising from the surrounding circumstances; to avoid hasty attempts to complete the mission, and to allow instead for sufficient time to reach an acceptable consensus. Expectations of immediate economic gains should be tempered as well, as gradual economic reforms are adopted that seek to establish justice while avoiding severe societal shocks.**

## **Rights of women at the heart of any transitional process towards democracy**

The political milieu surrounding negotiations affects the status of women in the constitution: political conflicts might have a direct or indirect impact on influencing the course of these negotiations. Women are usually confronted with the argument of priority: they are called on to put off their demands for gender equality, with the pretext that it is not a priority and may be addressed once political stability is established. However, the different experiences examined in this study have shown that it is a mistake to separate women's rights from freedom, political rights and security. No radical change can be achieved in the field of freedoms in general, as long as the rights of women are neglected. Moreover, the Tunisian experience shows us that it is crucial to seize the opportunities presented in the early stages after a revolution to consolidate the choices that will give the legal status of women its due priority. Therefore, women's rights and gender equality should be a priority in the drafting of the constitution and in rejecting any allegation that "now is not the right time to talk about the rights of women". This is one of the most important factors that have enabled the Tunisian community to draft a constitution that provides for gender equality.

In Egypt, political considerations took precedence over the negotiations on gender justice as the Committee of 50 struggled to draft fairly good texts that would achieve it. For considerations related to the electoral system and competition among parties and political powers, no specific number of seats were designated for women in Parliament.

In Jordan, the word 'gender' was not added to Article 6 of the amended constitution due to a widespread assumption that adding the word 'gender' would serve as a prelude to the amendment of the nationality law. This would enable many Palestinians living in Jordan and married to Jordanians to obtain the Jordanian nationality. It would thus threaten the Jordanian identity and give an advantage to Jordanians of Palestinian origin. This was the situation in addition to the presence of a conservative mindset in power, one that does not wish to amend the civil status laws in Jordan, that forms a major claim of the Jordanian women's movement.

**Experience has proven that placing women's rights at the heart of the transitional process without any delay under the pretext of other prevailing political priorities, and acknowledging gender equality as an integral part of democracy, is a needed approach that should not be compromised.**

## **The drafting of constitutions amidst political conflicts and divisions**

Recent history has shown that constitutions drafted in times of conflicts and wars might deepen conflicts and sow seeds of chaos. The political environment plays an important role in facilitating or impeding the drafting of the constitution. The constitution is required, inter alia, to protect all female and male citizens and to provide for a good representation of their voices and interests. It is required to strike a balance and provide for equality among all citizens, regardless of their power on the ground. Here lies the difficulty of drafting constitutions in times of conflicts. In times of confusion, where the balance of power does not reflect the diversity in society, the constitution becomes a battlefield for conflicting parties, and its function changes from being a social contract that preserves the interests of all, to a document that reflects the balance of power at a specific historical moment, effectively reflecting the interests of the most powerful social or political groups and institutions.

**Amidst times of confusion, it might be wise to put off the drafting of the constitution until conflicts have quieted and the situation settled down, and simply make one temporary constitutional amendment that would direct the political course in the transitional period.**

## **The drafting of constitutions amidst wars and armed conflicts**

The Syrian experience is a stark example of how wars and conflicts are not conducive to constitution drafting. In fact, the drafting of the Syrian constitution in 2012, despite the ravaging war, was met with the objection of the opposition and their refusal to participate, hence resulting in more chaos and depriving the constitution of its legitimacy. Division and fragmentation arising from armed conflicts between conflicting political parties also characterise the situation in Libya, where the toppling of Muammar Gadhafi has led to the collapse of the State and the eruption of a full-scale war. Amidst these circumstances, the issue of women's rights and gender equality were marginalised. In Iraq, the fundamental issue is the legitimacy and credibility of drafting a constitution under occupation. Many analysts have highlighted the numerous mistakes made by the US Administration, and contended that the administration abused its authority in Iraq and was biased towards some parties, when compared to other countries experiences similar to Iraq.<sup>173</sup>

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<sup>173</sup> Andrew Arato, *Constitution Making Under Occupation: The Politics of Imposed Revolution in Iraq*, (New York: Columbia University Press, 2009).

The Iraqi constitution established a new social contract reflecting a sectarian and ethnic-based approach that has drowned Iraq in violence and conflicts ever since. This reality raises many questions as to the international community's responsibility in monitoring the situation in Iraq, the US control over coalition forces, the so-called liberation war, and the process of drafting of the Transitional Administrative Law, which was in effect, an interim constitution, that determined the shape and direction of the permanent constitution, as well as the political process for the constitution drafting which has been described as "a classic imperial enterprise".<sup>174</sup>

**Amidst conflicts, women's rights and gender equality are most often sacrificed. It is therefore wise to avoid drafting constitutions in times of armed conflicts, wars or under foreign occupation.**

### **The establishment of a constitution drafting body as per democratic criteria**

The diverse experiences of the bodies entrusted with the drafting of the constitution in the Arab countries under study prompt us to reflect on and reconsider the best means of establishing such bodies, and examine the pros and cons of each method. Elections are considered by many to be the best mechanism for the establishment of a drafting committee, as they allow large sectors of the population to take part in the drafting of this important document, hence meeting the criterion for representative democracy. However, the realistic experiences in the Arab region and worldwide do not necessarily validate this hypothesis. Commentators have argued that the wide representation in a constituent assembly and the necessity to ensure a democratic constitution by means of electing the committee is a controversial issue, on the ground that the constitution drafting committee is different from a parliament. The parliamentary elections produce mostly a specific political current that takes hold of power for a period of time that allows it to implement its vision or project according to the rules of democracy and rotation of power. The constitution, on the other hand, is a social contract that regulates the relation between the State and the citizens, and that limits State power while protecting the rights and freedoms of the population. The drafting of the constitution must not be monopolised by any political or religious current, since the constitution must protect the interests of all categories, particularly minorities and the least represented citizens. Accordingly, elections are not necessarily the best mechanism for establishing a constituent assembly. Moreover, it is important to take into consideration the constraints and challenges of holding elections in countries that do not have established democratic electoral traditions that result in a transfer of political power, since in these contexts, elections would not result in a balanced representation of social diversity.

In Tunisia, a National Constituent Assembly, elected by means of general free elections, drafted the constitution amidst tough, competitive and honest elections that abided by rules put by the independent electoral administration. Electoral turnout was low especially if we take into account the fact that these elections took place after a revolution.

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<sup>174</sup> Zaid Al-Ali, *The Struggle for Iraq's Future: How Corruption, Incompetence and Sectarianism Have Undermined Democracy*. (New Haven and London: Yale University Press, 2014), p.78.

The results reshuffled the political and ideological balance of power that was enshrined in the Higher Authority for Realisation of the Objectives of the Revolution, Political Reform and Democratic Transition, which was mainly composed of modern and secular political forces. The elections' results showed that the only political powers to win over voters quickly were the ones that appealed to their hearts, and the ones that were based on a belief system that enabled them to ignore the complexities of a political project. At the same time, both old and new political parties struggled to mobilise and promote their programs, as they were new and also weak, a consequence of a history of oppression and bans. However, the Ennahda party found itself an easy ground to mobilise through the use of appeals to religious identity, an identity which, according to them, was blurred and repressed under Bourguiba. Ennahda also benefited from the unconscious wave of sympathy, because of the oppression its leadership faced under Ben Ali. Though all the political parties involved in the elections accepted the results, and though local<sup>175</sup> and international<sup>176</sup> observers concluded that the electoral process was overall honest, nevertheless, the nature of results it produced created fears, amongst large sectors of society, of the 'Islamisation' of the constitution despite the reassurances of the Ennahda leader.<sup>177</sup> Therefore, these results could have jeopardised the legitimacy of the Constituent Assembly from the beginning<sup>178</sup> and directly affected the course and methodology of drafting the constitution.

Tunisia's decision to draft a new constitution after the revolution was both difficult and not without risk. In fact, drafting a new constitution provides no guarantees as to the content of the new text, since the revolution, which brought in freedom of expression and thinking, could make way in general to any idea or discourse that does not necessarily arise from liberating or modernistic sources and may lead to a new form of oppression by new parties and conservative social mores. Moreover, it is risky to entrust the drafting of the constitution to a body that is elected by means of free and direct elections in a country that had never known democratic or honest elections. That is in a country where no one really knows the real weight of the political forces, regardless how bold and positive the choice may have been.

In Egypt, the Islamist forces manipulated religious and sectarian feelings during the elections, used religious platforms in electoral propaganda, and succeeded in controlling the People's Council and the Shura Council, as well as in excluding the political forces that were behind the revolution. The Constituent Assembly established in 2012 and elected by two elected Councils was mainly controlled by a majority that was religious and conservative and that openly excluded all dissonant voices before fully taking over the drafting of a constitution that consolidated its own vision of the State.

In Iraq, to argue that the National Assembly entrusted with the drafting of the constitution was elected in free elections, may be misleading since the context was extremely tense and was dominated by negative propaganda aimed at feeding the sectarian and ethnic divisions, in addition to the calls to boycott the elections by Sunni Arabs who felt marginalised and excluded.

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175 Reference can be made for example to the report of Atide <http://www.atide.org> or the League of Female Voters that did not only exercise control but have done a great job raising the awareness of women in elections and encouraging them to participate therein <http://jamaity.org/association/ligue-des-electrices-tunisiennes>

176 Carter Center is another reference <https://www.cartercenter.org/countries/tunisia.html>

177 <http://www.alqudsalarabi.info/index.asp?fname=data/2011/2011/10/10-28/28e31.htm>

178 Yadh Ben Achour, 'Tunisie une révolution en terre d'Islam', p. 285

**It is crucial to choose a participatory approach in the drafting of the constitution, one which guarantees real and efficient democratic participation. At the same time, it is important to bear in mind one very important issue: while elections are a crucial and consensual way of achieving participatory democracy in the drafting of the constitution, it is nevertheless not the only way, especially if it does not provide for fundamental factors that guarantee real participation by all sectors of society without any discrimination. It is equally important to guarantee the participation of diverse social groups as well as the participation of experts in different fields of knowledge, and to take specific measures in order to achieve this goal, either by means of appointment or elections, as the case may be for every country.**

### **The post-revolution constitution: A new social contract or a deferral of major issues?**

Though the revolution is, at some level, an extra-legal act, most Arab revolutions have followed a legal path. The Egyptian revolution, for example, followed a specific legal framework from day one. The Military Council in power, after Mubarak was toppled, issued a constitutional declaration suspending the 1971 constitution and establishing a Committee for the amendment of the constitution. Accordingly, the rules governing the post-revolution political and legal processes were set.<sup>179</sup> When it was time to draft the constitution, the Egyptian constitutional traditions were present in all discussions and focus was put mainly on the importance of building on such traditions. This raises a question that is relevant to all the countries in this study. If the revolution, or the movement calling for change, constitute a challenge to the existing political regime, and in turn, to the constitution or social contract between the State and its citizens, does achieving the demands of the revolution require the writing of a new social contract that does not abide by the constitutional tradition? And what are the guarantees for achieving gender equality in a new social contract?

After the January 25<sup>th</sup> Revolution in Egypt, many discussions took place amongst civil society actors about the need to draft a new social contract, and indeed many initiatives were undertaken. However, due to the fast pace of events, and many of the decisions taken by the Military Council regarding the amendment of the constitution, the voices advocating for minor amendments and building on the constitutional traditions in Egypt gained momentum and precedence. This direction blocked the possibility of addressing many key questions related to the shape of the modern civil State, (that is neither religious nor military), about the relationship between the State and religion, about citizenship in the nation State, about gendered power relations and many other issues that were not subject to discussion or dialogue among the population. Therefore, many important issues crucial to the relation between female and male citizens, and between them and the State, were deferred and inadequately addressed.

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<sup>179</sup> Lama Abu Odeh, "Of Law and Revolution," *University of Pennsylvania Journal of International Law*, 34:2 Winter 2013, 341-361. "The forces that have come to the fore since toppling Mubarak in February 2011 have chosen law as the privileged form through which to bargain with each other".

In Syria, there was no real rights-based discussion about the drafting of the 2012 constitution. As the regime monopolised the process after the opposition's boycott, and as the drafting committee included many figures who were already involved in the drafting of the 1973 constitution, the new constitution came as a continuity of the former one, while few amendments were introduced with the hope of appeasing the revolutionary wave.

In Tunisia, fiery discussions occurred at the start between supporters that sought to maintain the 1959 constitution, and those who wanted to amend it and remove all articles that gave full powers to the President. The former would allow the President to stay in power and to control the political life including controlling those calling for the drafting of a new constitution. The latter won and it was agreed to build on the Tunisian constitutional tradition and its positive aspects. The process however was not free of risks and consequences. With the relatively stable political situation and the regional developments in the neighboring countries, the Tunisian political forces managed to produce era constitution that instituted a new social contract for Tunisia.

In Algeria, the discussion revolved around what was constitutionally needed. Was it a restoration of the current constitution, or to start a constitutional revolution that would open a new chapter for the country? The governing authority decided to go with the first choice as it was in need for a constitution that maintains the continuity of the political regime and its working mechanisms, while keeping some flexibility to respond to the demands of large societal groups, without breaking up with the current political setup. The opposition forces, however, opted for the second choice and decided to break with the old constitution and start from scratch. They believed that a strictly "limited and selective" constitutional amendment was not the best answer to the perilous political and institutional crisis. Among the things that have not been discussed or properly tackled, is the role of the army in the constitution and in the political process, despite the importance and sensitivity of the issue and more specifically the relation between the presidency and the army and the risks of having a double-headed power.

The constitutional polemic in Lebanon was different. The legal controversy was not related to the shape and content of the new constitution, and whether it will be a continuity or rupture with the former one. It was rather related to the need for drafting a new constitution and whether it is better for women to focus their legal struggle on the constitution or the current local laws.

In Morocco, the decision to build on the constitutional tradition, instead of breaking with it, gave the impression that the royal initiative did not rise to the level of the protest and did not fully envision the specificity of the moment.

In Iraq, in the aftermath of the war, the Coalition Provisional Authority (CPA) adopted a political vision for the State, transforming Iraq into a federation. This necessitated the drafting of a new constitution that would regulate the relation between the regions and the central power, and would re-distribute wealth. However, there were numerous obstacles: divisions and conflicts around the formation of the drafting committee as would it be elected or appointed; divisions among the members of the committee (Sunni parties feeling marginalised, women not participating enough, the dominant role of religious forces compared to secular forces, the coalition of the Shiite parties and the Kurds taking over, etc.). Finally, the short deadline for conflict resolution, and for reaching a political compromise that would have favoured unity over divisions was also questioned.

Observers disagree on the assessment of the 2005 Iraqi constitution. Some believe that the constitution has achieved its intended goals and laid the foundations of a modern State that strikes a balance between the different components. It has enabled Iraq to hold unprecedented democratic elections in the history of Iraq and the region<sup>180</sup> and that, despite some setbacks, it is a success story bearing in mind the challenges and obstacles the Iraqi elite encountered since 2003. Other observers maintain that the constitution sowed seeds of discord and hold it contributor for the deterioration of the security situation in Iraq.

Haydar Ala' Hammoudi argues that the Iraqi constitution developed a politically viable consensual formula at a sensitive moment by deferral, i.e. choosing ambiguous and vague wording in some articles to postpone the settlement of some thorny issues. The use of such deferral softened explosive issues and diffused tension in the negotiations. Hammoudi believes that this deferral-based methodology is necessary when it is impossible to reach consensus among all parties. He argues that the conflict on religious identities in Iraq between the Kurds, Sunnis and Shiites was not merely a struggle over political interests and influence. Rather, it was primarily a conflict on contradictory visions about the shape of the State and status of religion in the State.<sup>181</sup> Hammoudi refers to the fate of Article 41 in the constitution as an example of a deferred issue. It is an Article which was met with a great deal of opposition by women's groups as it potentially opened the door for conservative political groups to magnify the jurisdiction of Sharia courts over the Iraqi Personal Status Law<sup>182</sup> 188 of 1959. It would introduce changes that would retract some of the gains achieved by women. He draws attention to the fact that Article 41 did not produce tangible amendments in the Personal Status Law and the parties that had fought for the article and sought to amend the Laws on personal status did not fight for its implementation especially that Iraqis, both Sunnis and Shiites, did not seriously consider the Islamisation of the laws.<sup>183</sup>

Other analysts believe that the Iraqi constitution, which was subject to the 2005 Referendum, was a "wasted opportunity" and was unable to give legitimacy to the new regime.<sup>184</sup> It even failed in achieving stability and building a society on the ground of democracy. This is evidenced by the climaxing sectarian conflicts, the widespread violence among the rival political forces, and its spillover on civilians, the so-called Islamic State of Iraq and Syria (ISIS) gaining ground and the bloody war. Contrary to the above-mentioned argument favoring deferral, there were many opportunities for reaching a possible agreement between all parties, despite the identity conflicts and the different political interests.

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180 Paul Bremer, *My Year in Iraq: The Struggle to Build a Future of Hope. With Malcolm McConnell, Threshold Editions*, (New York, 2006), p.398.

181 Haidar Ala' Hammoudi, *Negotiating in Civil Conflict: Constitutional Construction and Imperfect Bargaining in Iraq*. The University of Chicago Press, (Chicago and London: 2014), pp.223-230.

182 See footnote 37 for definition of Personal Status Law.

183 *Ibid.* p.205.

184 Jonathan Morrow, *Iraq's Constitutional Process II: An Opportunity Lost*. USIP, No. 155, 2005, accessible via: [https://www.usip.org/sites/default/files/sr155\\_arabic.pdf](https://www.usip.org/sites/default/files/sr155_arabic.pdf)

The reasons of the failure, according some analysts, first and foremost, related to the US role in managing the transitional period and its imposing a tight schedule in the Transitional Administrative Law which resulted in problems that could have been avoided.<sup>185</sup>

Other reasons for the perceived failure of the Iraqi constitution to achieve stability are related to the mistakes by the Iraqi political elite and their inability to reach a compromise on key issues related to the shape and identity of the federal State, distribution of wealth, the role of religion in Kirkuk, and the disputed areas, the Law on De-baathification and the status of women.<sup>186</sup>

**There is no one answer to the question of whether the post revolution, or post-political transformation constitution, should constitute a new social contract, or be an amended extension of the existing constitution. Choosing a constitutional course, i.e. abandoning the constitution on which the old regime was based on, and drafting a new constitution was a choice that was in harmony with the revolutionary context in Tunisia. In Iraq, a federal constitution that established a new political reality was written while deferring the resolution of some fundamental issues. Considering the developments in Iraq and the security relapse after the adoption of the constitution, this choice has become a matter of controversy and disagreement.**

**Most Arab countries chose to introduce amendments to existing constitutions that varied in magnitude and impact as per their own circumstances.**

**Regarding the safeguarding of gender justice in constitutions, while deferral may work for some contentious issues during, or after wars and major conflicts, it is not conducive in achieving gender justice in the long term.**

## **The women involved in the drafting of the constitution**

Experience shows that it is crucial to have feminist women willing to give precedence to women's rights issues unequivocally and without compromise in the councils or authorities entrusted with the drafting of the laws and constitutions. In Tunisia, the proposal to have parity as the basis for the candidacy to elected bodies, was put forward by the Authority of Experts affiliated with the Higher Authority for Realisation of the Objectives of the Revolution, Political Reform and Democratic Transition. The Authority included feminist academics and legal experts. As for the National Constituent Assembly, the number of women members of the Ennahda Islamic party was 39 out of 58.

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*185 Feisal Amin Istrabadi, "A Constitution Without Constitutionalism: Reflections on Iraq's Failed Constitutional Process," Articles by Maurer Faculty. Paper 2362, 2009, p.1633- 1642. According to another researcher, "Iraq was the victim of American internal politics" since the US elections won the upper hand over any consideration related to the security of Iraq and the future of the region. Morrow concurs. Upon reviewing the Law on Administration of the State, he concludes that the whole drafting process was "hasty and secretive.... and highly influenced by the US political interests". See Jonathan Morrow, Iraq's Constitutional Process II: An Opportunity Lost. USIP, No. 155, Nov. 2005, p.5 accessible via: [https://www.usip.org/sites/default/files/sr155\\_arabic.pdf](https://www.usip.org/sites/default/files/sr155_arabic.pdf).*

*186 Saad N. Jawad, "The Iraqi Constitution: Structural Flaws and Political Implications", LSE The Middle East Centre Paper Series, November 1<sup>st</sup>, 2013, p.12-13.*

Most of their political positions supported the rights of women. They regularly voted for the chapters on the protection of the rights of women and gave precedence to the cause of women over party allegiance. They also engaged in a constructive dialogue with female parliamentarians from the opposition. The presence of these women feminists or defenders of the rights of women had a significant influence on the constitutional process with regards to engendering the constitution.

In Egypt, we can also mark the importance of the participation of feminist women in the negotiations on rights and freedoms. The 2012 constitution drafted by the Constituent Assembly, in which the majority of members who belonged to Islamist political parties, deleted all reference to gender equality. Women were only seven out of one hundred, three of them were members of the Muslim Brotherhood, one was a female activist, two were academics and one was a member of a liberal party. Female members affiliated with Islamist parties dominated negotiations on rights and freedoms as well as women's issues. Their positions were generally conservative and in conflict with the proposals presented by feminist groups regarding gender-sensitive articles and language.

The situation changed enormously during the negotiations on the rights of women in the 2014 constitution. Though female representation at the Committee of Fifty did not exceed 10%, the Committee included both women and men who were advocating for rights of women. Three out of the five female members were feminists with a long history in defending the rights of women and also enjoyed close relations with feminist organisations in the country. Contrary to the 2012 Constituent Assembly, women's rights were at the heart of the interests of the Committee of Fifty since its establishment. The Committee held consultation sessions and a series of meetings with rights groups and responded to many of the demands of Egyptian feminist organisations, if not all.

Female representation in all bodies is crucial in order to ensure that the voices of women are heard. However, the mere presence of women around the negotiating table may not necessarily achieve the goal of effectively representing women's concerns and demands. The background, convictions, ideological affiliations and experience of these women are also important to ensure good and fair representation of gender justice. The Tunisian and Egyptian experiences have proven that the presence of feminists in legislative councils and committees played a major role in preserving the rights of women and defending their claims.

**A mandatory quota is needed to counterbalance the structural exclusion of women from the political sphere, while bearing in mind that it may be used by political parties to promote women who are more supportive of their political program than of women's rights. Gender equality can only be achieved by guaranteeing a substantive role for women, and particularly for feminists in public debates and at the negotiating table.**

## Ensuring the implementation of the constitution

One of the lessons learnt on the legal level, is the capacity of national laws to empty constitutional texts of their value and content. This is the case despite the fact that the constitution is the supreme law of the land and all national legislations are subject to it. This legal paradox is reflected mainly on the rights of women as most Arab laws are conservative and mix between social customary values and the religious legislative foundations with elements of civil ideas. This mixture varies from one country to another, but in general does not favour equality between women and men but tends to consecrate women's subordination. The Tunisian Personal Status Laws are the exception to this rule as regards to enacting women-friendly laws and constitution, even though with some minor defects that the Tunisian feminist movement is striving to rectify.

The Jordanian scenario points to a major fact: the constitution is not the only or the most important factor for changing the legal status of women. In fact, a feminist movement is equally important and can trigger vital changes in society and the laws. Though the demands of women to add the word "gender" to Article 6 fell onto deaf ears, and though the Jordanian constitution does not clearly provide for equality between women and men, women's rights organisations succeeded after decades of lobbying and negotiations to amend a bulk of laws in favor of women. Among the amendments that took place after the enactment of the constitution was the amendment of the Penal Code Article 308 further to the requests of Jordanian women organisations. On August 1<sup>st</sup> 2017, the Parliament abolished the controversial Article 308 of the penal code that allowed for the alleviation of the penalty of sexual assault perpetrators if they married the victim, hence ensuring that the rapist is penalised regardless.<sup>187</sup> This is considered a triumph for the Jordanian women's rights organisations that led the campaign for abolishing the article.

**Women have to work and lobby on all levels in order to amend all the laws that stand against gender justice.**

## The role and effectiveness of the civil society

The drafting of post-revolution constitutions teaches us that it is the whole society that pays for the decades-long muzzled civil society, hindering its efficiency and capacity of having an impact on the process of constitutional changes, as well as events on the ground. This is the main characteristic of the civil society in the Arab region in general. In particular, it applies to feminist organisations, bearing in mind the differences among countries at the level of the restrictions and the available spaces for negotiations and contention.

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187 Rana Hussein, "In historic vote, House abolishes controversial Article 308," in Jordan Times (August 1<sup>st</sup>, 2017. <http://www.jordantimes.com/news/local/historic-vote-house-abolishes-controversial-article-308>

The main characteristic of the Egyptian revolution is that it erupted in the absence of traditional leadership or political groups having the capacity to guide or control the course of its development. Over more than half a century of authoritarian policies, civil society (parties, syndicates, civil organisations) was undermined, weakened and emptied of efficient leadership that had credibility and popular legitimacy. The practice of politics was limited to professional syndicates or rights-based local organisations. With the first spark of the revolution in 2011, the political arena regained vivacity and initiative, and rights-based organisations were active in supporting revolutionary activity by documenting events and providing legal assistance amongst other activities. Many parties and initiatives were established and syndicates challenged the security interference in their affairs. However, not one syndicate or civil association or party had support at a grass roots level, and therefore did not have the capacity and the resources to organise and lead the interim political process after Mubarak was ousted. The responsibility to manage the next stage fell on the shoulders of the Supreme Council of Armed Forces. The Muslim Brotherhood emerged as a force to contend with, as they depended on their organisational capacity and the social networks they had built over the years. This was in addition to their manipulation of a religious discourse that addressed people's emotions. The role of the civil society (namely syndicates, associations and new parties) was confined to exerting pressure, negotiating and raising public awareness. The civil current was unable to organise a strong lobby supported by a popular base capable of directing the transitional process to meet the demands of the revolutionary movement for change.

In Syria, the civil society was stagnant and closed shut. It was due to the dominance of a one-party regime and the absence of political plurality as well as laws that guaranteed autonomous and effective civil work. The ruling party controlled all organisations and associations. They monopolised the activities and events held by workers, youth or women through legislation that established professional coalitions.

The Iraqi civil society was weak and fragmented, because of the Ba'ath dictatorship, which did not allow the establishment of independent civil associations. In addition, the wars, the economic embargo and imposed sanctions, and the stoking of sectarian tensions by an authoritarian regime crippled civil society. Iraq lapsed from a welfare State whose citizens enjoyed a significant level of ease of living, to a country that suffered from the deterioration of all services. After 2003, and due to policies adopted by the Coalition Provisional Authority, sectarianism became deeply imbedded in political institutions. Divisions increased while conflicts and violence reached a climax.<sup>188</sup> All of the above hindered the capacity of women's rights organisations to organise and exert pressure on the political discourse. After the fall of Saddam, CSOs mushroomed in Iraq; some even played a crucial role such as the Women Organisations Network which comprises over 80 women's organisations working all over Iraq.<sup>189</sup> Women organisations were faced with many obstacles and suffered from masculine politics that characterised the interim phase.

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<sup>188</sup> See: Nadjie Al-Ali and Nicola Pratt, "Women's Organising and the Conflict in Iraq since 2003," *Feminist Review*, 88, 2008, p.74.

<sup>189</sup> For a detailed explanation of the challenges that women organisations were faced with in Iraq after 2003, see:

Nadjie Al-Ali and Nicola Pratt, "Women's Organising and the Conflict in Iraq since 2003," in *Feminist Review*, 88, 2008, p.74.

Observers agree that women's rights movements in Jordan have very limited grass roots outreach. This has effectively weakened their position at the negotiation table. This state of affairs is in fact the result of policies that have besieged civil society and undermined the capacity of political parties to organise and garner popular support. Feminist activists did not succeed in including feminist demands among the popular call for change in 2011. Since the balance of power was not in favor of women, other political considerations were prioritised and gender equality sacrificed.

The Algerian constitutional experience reveals the limited role of civil society, be it in terms of the popular movements in the early 2011 or the constitutional amendments in 2016. The Algerian Government (after the popular uprising in 2011 and prior to the constitutional amendments in 2016) enacted a new law submitting CSOs to State authority including the authority to deprive them of official registration and withdraw their license should they be perceived to "act against the law", "national values", "public order" or "public morality". Moreover, the authorities were granted the right to disband or suspend the permit of any association that was seen to "interfere with Algeria's internal affairs" or "threaten national sovereignty". These restrictions were coupled with many others imposed on the freedom of assembly and demonstration.

In Lebanon, civil society, in its current situation, does not seem capable of pushing the constitutional matters forward or introducing the changes needed in the wake of the civil war, though many feminist organisations have a space for the freedom of movement and expression that does not exist in most of the Arab Countries.

Upon the breakout of the Libyan revolution, civil society was suffering from political and civil weaknesses because of the quasi-total ban imposed by the Gadhafi regime on political parties and civil associations. Political actors who would have taken the lead when Gadhafi was toppled were thus not ready to undertake this delicate and difficult task.

In Tunisia, the Constitutional Party continued to rule and submit the work of parties and associations to restrictive legislations. In 1981, it allowed for a limited political plurality. As for CSOs, they had their share of restrictive and obstructive laws, and politics was limited to the work of syndicates. For example, the Tunisian Labor Union fought political battles for decades; its members were arrested and brought before court. Some independent rights organisations such as the Tunisian Association of Democratic Women stood against the regime, as much as possible, and maintained autonomy and credibility. One can therefore say that despite the obstacles imposed on political action and on civil society, some Tunisian CSOs were capable, after the revolutionary wave, to join efforts and become an effective actor during the democratic transition period.

**Restricting civil society hinders the democratic transition process. The more numerous the restrictions, the higher the probability of civil society not being able to organise protests, fill the power gap during the transition, or push forward a progressive agenda, one that includes the rights of women.**

## Constitutions and culture

The drafting of Arab democratic and modern constitutions requires intellectual, cultural and social revolutions in addition to political revolutions. There are still many controversial and unresolved issues regarding the relationship between religion and the State, the shape and identity of the State, the nature of the political regime, and the relation between the State and the military. This requires a concerted effort by all parties concerned.

Moreover, there is a lack of awareness about gender issues and their importance for the democratic process. Gender equality is either marginalised by political forces, or relegated to the bottom of the list of priorities, which places many hurdles on the path to democratic change. Among the cultural challenges faced by women in most Arab countries, is the strong link between women's rights in society and identity conflicts - challenges that extend back to the establishment of the modern State in the 20th century. Over many decades, the status of women in Arab societies has been linked to the opposing positions vis-à-vis modernity. Women became a symbol of the threatened cultural identity in the post-colonial States. Thus, any discussion of women's rights is transformed into a debate about identity, the relationship between East and West, and the need to protect women and the family from Western influences and ideas. This identity-based discourse is propagated by religious currents as well as nationalist ones.

In Egypt for example, the status of women was highly debated in the battles leading to the drafting of the 2012 and 2014 constitutions. In the aftermath of the 2011 revolution, pro-democratic voices sought to revolutionise the cultural identity discourse in the direction of ensuring equality between female and male citizens. The Islamist elite, on the other hand, tried to monopolise the identity discourse and put women on the frontline of the battle over identity. They called for the amendment of the Personal Status Laws and the removal of so-called 'anti-Sharia articles' which according to them undermined cultural identity. However, these were in fact articles which guaranteed women's rights acquired in the twentieth century. The struggle over who was entitled to speak on behalf of cultural identity continued until after June 2013, and had a direct effect on the drafting of the 2014 constitution. Thus, any discussion about the Personal Status Laws or the constitutional articles on rights and freedoms is influenced by pre-conceived ideas about cultural and religious identity, where women become symbols that define the contours of this imagined identity. This battle over who speaks for Arab or Muslim cultural identity is characteristic in all Arab Countries without exception, albeit with different manifestations and varying intensity.

In the aftermath of a new reality imposed by the 2003 occupation in Iraq, an identity crisis gained ground in politics. It was as a result of the sectarian vision imposed by the Coalition Provisional Authority, and the ethnic/sectarian-based distribution of positions and power. Women and their status in society occupied the center-stage in the struggle between conflicting sects over cultural legitimacy and national independence. As mentioned earlier by Haidar Hammoudi, the controversy over Personal Status Laws was not about substance.

Rather, it was about who had the power to determine what is Islamic, or who represents the threatened cultural specificity of Iraq. Moreover, a rigid almost aggressive approach to the issue of women's rights became symbolic of fighting Western occupation and a statement of national independence. This can be understood in the context of a dominant narrative that justified the invasion of Iraq on the grounds of rescuing Iraqi women and improving their status in society. This pseudo-narrative took hold despite the fact that the status of women was never a concern of the Coalition Forces. However, women became the victims of both colonial and nationalist identity discourses that had manipulated women's rights discourse to serve their own political interests.

In Algeria, the controversy about identity revolved around the adoption of the principle of parity. Opinions varied and were divided along secular versus Islamist lines. Islamists saw parity as a threat to the family as it disregards biological differences between sexes and goes against religious customs and constants that needed to be preserved as part of cultural and religious identity. On the other hand, secularists believed that parity responded to the legitimate demands of democratic women.<sup>190</sup>

In Libya, Mustafa Abdul-Jalil, President of the National Transitional Council (NTC) declared, in his first statement, his intent to work on establishing an Islamic regime and abolishing all the laws that do not conform with Sharia, particularly, the prohibition of polygamy in the Libyan law. The Personal Status Laws and the status of women in Libya soon became at the center of the conflict over identity, as if the revolution erupted over questions of identity, and not politics.

**Since the law is not only a tool that reflects the reality of a society but could also be a tool for its modernisation, it is useful that the legal instruments take precedence and become a tool for the development of society and not a simple fossilised image of the latter.**

## B. Impacts on the constitutional process: political currents, external intervention

### **The rise of right-wing parties and their impact on the drafting of constitutions in the Arab region**

Some analysts argue that the democratic transitional processes in the Arab region were also jeopardised by the rise of right-wing parties, especially in governments that have a democratic history. This effectively impedes the drafting of democratic constitutions that preach freedom and equality among citizens. It coincides with an increase of extremist groups in the world with a foot in the Arab region. With the litany of the war on terror picking up again, many countries believe that

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<sup>190</sup> Equality subject to disagreement between Algerian women available at: <http://wonews.net/ar/index.php?act=post&if=10841>

timely security solutions in the short term should prevail and translate into ‘exceptional’ measures against the freedoms and rights of citizens.

**International right-wing trends are very dangerous to the future of democratic governance and must be confronted and resisted by all pro-democracy actors.**

## **The impact of the regional context and conflicts on the drafting of gender-sensitive constitutions**

The post-revolution transitional period is weakened by an increasingly troubled region. A region that is bending under the yoke of war-caused disturbances that have a spill-over effect on neighboring countries and convey a political message that may not necessarily call for peace, stability, democracy, universality, indivisibility, interconnectedness and integration of human rights, or the centrality of women’s rights.

Though Tunisia sparked off the revolutionary movements in the Arab region, influencing even the slogans, it was in turn, affected by the revolutions breaking out in the remaining countries. In terms of security, the Libyan revolutionary movement, slipping into a war involving international military forces, resulted in a humanitarian crisis and a large influx of Libyan refugees and migrant workers to Tunisia. This migration worsened the economic and security conditions in the country; conditions that were already compromised by the post-revolution chaos and the weakness of the State mainly caused by the dismantling of the intelligence services.

From a political perspective, the islamists in Tunisia benefited from the election of Mohammad Morsi, an islamist leader, as head of the Egyptian State, which gave the Ennahda party moral support as he believed that the future of the Arab region would be islamist. Large numbers of islamist scholars flooded the public sphere in Tunisia and filled it with discourses and issues that were not on the agendas, of either the revolution, or of the constitution drafting committee. The discourses propagated issues and ideas that were alien to the Tunisian religious traditions.<sup>191</sup> Events in Egypt however, took on a different course and led to the toppling of Mohammad Morsi. The confidence of the Ennahda party and the islamists in general was shaken and the movement’s President went as far as he could, distancing himself from the Muslim Brotherhood in Egypt. He for example stated that the invitation of the Salafist sheikhs to come to Tunisia was a mistake.

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*191 For example, the visit of the preacher Wajdi Ghneim speaking about FGM and the discourse related to customary marriage and even the draft law submitted before the Constitutive Assembly on the establishment of the official authorized (ma’zun) institution to perform marriage ceremonies whereas the Civil Status Law had clearly defined the marriage contract and incriminated any marriage that is not concluded as per the legal methods.*

In Egypt, the deterioration in the security conditions in Syria and Libya, with revolutions slipping into violent armed conflicts, gave rise to a discourse that used fear of chaos and armed conflicts. It referred to the situation in Syria and Libya, using it as a weapon to reign in the revolution, and the wave of protests that had exerted pressure on the ruling elite to respond to the demands for change. The slogan “so that we do not become like Syria and Libya” was used to promote “stability” and reject “chaos”. Gradually, chaos was equated with the revolution, while stability was equated with the pre-revolution status quo.

Foreign interference negatively affected the democratic transition in Jordan, which depended on the assistance of Gulf countries. The latter spared no efforts or money to prevent and counteract change in the Arab region, fearing that the winds of change would reach them. It mobilised to preserve the interests of the ruling elite. On a political level, the reform movement, affected by the course of events in Egypt, Syria and Iraq, retreated and was replaced by an approach that aimed at containing the crisis to the advantage of the ruling elites. As conditions in the region deteriorated, many voices were raised to stress that Jordan was a safe Kingdom and that one should avoid the path leading to bloody conflicts, similar to the conflicts in Syria, Iraq and Egypt.

The Algerian constitutional experience shows that regional factors were the most influential in terms of adopting the constitutional amendments, and that the “Arab Spring” was the main trigger of such amendments. These amendments were a form of adaptation to the changing reality in the Arab region, as well as a precaution to a possible contagion.<sup>192</sup> At the same time, the authorities seized the opportunity of the failures of the “Arab Spring” to delay amendments. They also used the deteriorating conditions in Syria and Libya warning against a similar fate, and in favor of protecting the status quo in Algeria.<sup>193</sup>

**The neighboring context affects the constitutional course, whether positively or negatively. On one hand, the Tunisian experience was at the outset a source of inspiration to the Arab people calling for freedom and justice. On the other hand, the instability following the widespread movements in more than one country served the interests of the opponents of the revolution in order to terrorise citizens and crush the hope in people’s agency to effect change.**

## **The impact of international and regional interventions on the drafting of the constitution**

With the intervention of international and regional forces providing financial support and legal

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192 Naji Safir, *Political Developments in Algeria in the context of Changes in the Arab World* تطورات الوضع السياسي في الجزائر في سياق التغيرات الجارية في العالم العربي, *op.cit.*, p.368.

193 Dr. Nasser Jabi, *Algeria’s Constitution, A Babbling speaking about Rights without guaranteeing them* در.نصار يتحدث عن حقوق لا يضمنها *op.cit.*, p.4

framing, the Arab scene became more complicated. This did not always serve the interests of progressive powers. In Libya, international powers were directly and militarily involved in supporting the revolution to speed up the toppling of Gadhafi. They ignored the Libyan political context and neglected the possibility of what could happen to a State that was neither politically nor socially and culturally ready to face a power vacuum.

With the interference of foreign countries, the situation in Syria became increasingly inextricable. Syrian concerns and dynamics faded away and were instead replaced with international power dynamics. The will of Syrians was completely sidelined. Whilst there are international criteria that can be used to draft an aspirational and democratic constitution, regional stakeholders involved in the war have a less progressive standpoint towards constitutional matters, in general, and have a more backward vision towards the rights of women in particular. For example, the Joint Vienna Statement on November 14<sup>th</sup>, 2015 was adopted after talks about finding a political solution to ending the conflict in Syria. It was approved by 17 countries plus the EU and the US. It determined the future of Syria as reflected in the new constitution and stressed its 'secular identity'. This term was soon changed when Saudi Arabia invited representatives from the Syrian opposition on December 9<sup>th</sup>, 2015 to Riyadh to issue a statement which provided for the establishment of the Higher Negotiations Committee and replaced the word 'secular' [in the expression 'secular Syrian State'] with the word 'civil', ['civil Syrian State'] which results in different interpretations. In addition, early in 2017, the Russian delegation handed over a 'draft constitution' to the participants at the Astana conference gathered to discuss a truce. The draft was disastrous in terms of rights, democracy and gender equality. For example, Paragraph 4, Article 12 of the draft stated that "the State shall protect the family's religious and moral values and customs", which allows for the codification of traditions and customs that compromise gender equality.

In Iraq, despite the support and advice provided by some international institutions to the Iraqis during the drafting of the constitution, the issues of foreign aid and international intervention were extremely sensitive and were dealt with cautiously by the Committee's members to avoid jeopardising the constitution's legitimacy. Many consider that the constitution has no legitimacy as it was written under occupation. Others argue that the constitution fulfills the principles of democracy since it was drafted by an elected committee and was endorsed in a popular referendum.<sup>194</sup> However, despite the fact that the condition of women in the constitution was a main focus for international institutions, the final product, as per the testimony of civil society activists, did not support gender justice and even constituted a regression in safeguarding gender rights.

**The international and regional communities can play an important role during the drafting of a democratic constitution; a role that takes into account the gender-sensitive perspective. However, in the Syrian, Libyan and Iraqi cases, the interests of interfering foreign States have taken precedence over the process of democratic transition.**

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<sup>194</sup> Noah Feldman and Roman Martinez, "Constitutional Politics and Text in the New Iraq: An Experiment in Islamic (Democracy)", *Fordham Law Review*, 75:2, Article 20, 2006, p. 884. (883 920)

## The impact of knowledge paradigms and cultural representations on the constitution drafting

One of the main characteristics of the early phases of revolutionary movements that spread in the Arab region in 2011 is that they focused on freedom, dignity and social justice, and were not about establishing an Islamist State nor protecting an Islamic identity. It was only at a later stage, that revolutions were taken over by such movements. The revolutionary movements demanding justice and dignity came as a surprise to many observers and analysts because of the dominant paradigms used to study and understand the Middle East in many Western think tanks and research institutions. Dominant stereotypes about Arab societies encourage the interpretation of all events and political conflicts on the basis of a culturalist paradigm that relegates the political to the realm of culture, and assumes that religion and cultural heritage, not politics, are the main drivers of the Arab street.

The assessment by Noah Feldman, an academic and law professor, who played a key role in drafting the Iraqi constitution, is a fair representation of the impact of the stereotypical representations of the Arab street. He argued that *“more democracy will necessarily lead to more Islamisation”*.<sup>195</sup> He defended the Iraqi constitution as a democratic expression of the will of the people. Many analysts have disagreed. According to Feisal Istrabadi, the American administration practiced ‘the worst kind of identity politics’ and foregrounded religious and ethnic identities while completely neglecting political identities. He added that *“there had been a history of Iraqi nationalists who identified with a secular-liberal Iraq that had dominated Iraq throughout the twentieth century”*.<sup>196</sup>

In Tunisia, the European and American stances on the election results were not neutral. As they expected an Islamist party to win the majority of votes, they did not hesitate to offer islamists their diplomatic<sup>197</sup> support while defending the theory of a moderate or liberal<sup>198</sup> political Islam, as well as the possible cohesion between Islam and democracy.

**International interventions in the Arab region, post “Arab Spring” have played a role in supporting the rise of Islamist parties and fueling religious and identity conflicts.**

### C. Mechanisms and guarantees for protecting the democratic process and gender justice

The constitution must provide mechanisms that guarantee the implementation and execution of the rights of women in legislation. In Tunisia, the Constitutional Court is a central mechanism that guarantees the precedence of the constitution, and ensures that it is respected by the legislators with regards to the enactment of laws that consolidate equality among citizens, and that do not

<sup>195</sup> Ibid.

<sup>196</sup> Feisal Amin Istrabadi, *A Constitution Without Constitutionalism: Reflections on Iraq's Failed Constitutional Process*, Articles by Maurer Faculty. Paper 2362, 2009, p.1649.

<sup>197</sup> For example, the trip of Rached Ghannouchi, leader of the Nahda party to many European capitals and the US.

<sup>198</sup> Emma Hayward, “Assessing Ennahda, Tunisia's Winning Islamist Party,” in *The Washington Institute* (November 8<sup>th</sup>, 2011). <http://www.washingtoninstitute.org/ar/policy-analysis/view/assessing-ennahda-tunisias-winning-islamist-party>

discriminate against women. It also guarantees laws that oblige the State to guarantee equal opportunities. Moreover, since the Court is entrusted with overseeing the enforced laws inherited from the former constitution, and with challenging the unconstitutional ones before the administrative or judicial court, they help reform the existing legislative regime in ensuring conformity with the 2014 constitution. To day, this Court has not been established. However, Chapter 10 of the Constitutional Court's statutes encourages the parties entrusted with appointing the members of the Court to ensure parity.<sup>199</sup> The Supreme Judicial Council is a key institution assigned with guaranteeing the independence of the judiciary. It is entrusted by the constitution with protecting rights and freedoms against any violation including gender equality and rejecting any type of violence against women. It is also worth mentioning that the Council has not been established yet, though its members have been elected: 18 women and 14 men with a female representation that exceeds 50%.

In Egypt, the Supreme Constitutional Court is an important mechanism for guaranteeing alignment between the legislation and the 2014 constitution. It had an important role in identifying the unconstitutionality of some articles that prohibited protests in 2013. The constitution provides for an article that commits the State to the establishment of a Commission for Combating Discrimination in general, a mechanism that must play a monitoring and guiding role in the protection of women and in putting an end to discrimination against them. But until now, the Commission has still to be established. On the other hand, some analysts have argued that the 2014 constitution in Egypt lacks the basics of accountability and oversight.<sup>200</sup> According to this approach, and with reference to the articles that regulate the relation between the armed forces and State institutions, the constitution consolidated the independence of the military, making it unaccountable to oversight and supervision by civil institutions. This independent status of the military was established in the 2012 constitution and later consolidated in the 2014 constitution, a direction which contradicts the idea of building a civil, democratic and stable State.<sup>201</sup>

The second point is related to the mechanisms of accountability and the position of judiciary authorities in the constitution in both the 2012 and 2014 constitutions. Because of a complicated history burdened with the intervention in Egypt by the executive power in the judiciary, and the attempts to impose the control of the regime on the judicial bodies, the autonomy of the judiciary was among the principles that won the support of the political democratic groups since the 1960s.

The independence of the judiciary has been among the main demands of the Egyptian National Movement. However, some go so far as demanding that the autonomy of the judiciary is translated in the constitution in a way that would immunise the judicial bodies against any oversight or accountability. This in effect would fall outside the principles of democracy<sup>202</sup> and may lead to the

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199 Chapter 10 of the Statutes No. 50 dated December 3<sup>rd</sup>, 2015 on the Constitutional Court. "The members of the Constitutional Court shall be appointed alternatively by the People's Council, the Supreme Judiciary Council and the President [...] while ensuring parity."

200 Ahmed Abd Rabbo and Karim Shazli, *A Constitution that does not Establish Accountability and Control*, دستور لا يؤسس للمساءلة، مبادرة الإصلاح العربي والرقابية، Arab Reform Initiative, March 24, 2014, <http://www.arab-reform.net/ar/node/538>

201 *Ibid.*, p.6.

202 See Karim Chazli, *op.cit.*, p.10.

'balkanization of the State institutions'.<sup>203</sup> Last but not least, as a result of decades-long dictatorship, and of exclusionary politics that have weakened the civil society's capacity to undertake an efficient role in monitoring State institutions and putting pressure on the executive, the commitment of State institutions to the constitutional text remains relatively weak, which allows for violations of the rights and freedoms of citizens. In addition, the repeated violations committed by State institutions have undermined the constitution and the rule of law.

In Syria, there are no sufficient guarantees for protecting a democratic process because the war is still raging, a fact which impedes the possible implementation of the law and the pursuit of democracy. Though many support the 2012 constitution, believing that it is the beginning of a new era, it has however been subject to criticism. It is accused of not conforming to international criteria and does not include articles that provide for mechanisms for accountability and transparency.

In Algeria, despite the inclusion of some positive articles, the recent constitutional amendments do not seem to build a sustainable democratic path, as the new constitution has maintained a presidential system, which gives the President near to absolute power over all institutions.

**The constitution must have efficient and independent mechanisms that guarantee its enactment. However, experiences have shown that women's rights activists must exercise continued vigilance so as to ensure that these mechanisms are actually set up, that they are properly staffed and funded, and that they operate independently. The Tunisian example points to the importance of the text in providing the guarantees of gender equality in all laws and in respecting parity in the appointment of the members of the constitutional court.**

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<sup>203</sup> Nathan Brown characterized this manifestation of the idea of the independence of the judiciary as a form of "balkanization of the Egyptian State" in "Egypt's Judges in a Revolutionary Age", *The Carnegie Papers*, February 2012.

## A final word

Though the final product may not fulfill all the demands of a democratic transition, the process of drafting the constitution, in and of itself, opens the door for a discussion that could positively influence the political reality. In most cases, the positions of the different political movements vis-à-vis the rights of women were crystallised in the ideological battle between the liberal currents, and the islamist and conservative ones. The polemic around the constitution has led to the identification of the ideological affiliations of human rights defenders themselves. This has helped to determine points of agreement and disagreement, in addition to identifying commonalities that could be built upon. Many taboos that have once hindered the discussion of the rights of women have now been broken. This will definitely serve to contribute to the facilitation and improvement of future discussions regarding these rights.

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## ANNEX – TIMELINE OF EVENTS

ALGERIA	
Date	Timeline of events
January 3 <sup>rd</sup> 2011	The “Algerian Spring” started in the midst of rumors about young people intending to launch protests against inflation and the high cost of living. The demonstrations started in the city of Oran, in the West of Algeria, before spreading to other cities and provinces.
January 5 <sup>th</sup> 2011	The popular protest movement reached Algiers, the Capital, and expanded to the Kabilya region in the East, then to the Southern cities. It eventually spread to the majority of the Algerian cities.
January 9 <sup>th</sup> 2011	The government suspended the taxes imposed on sugar and food oil for eight months and initiated a reform package.
January 21 <sup>st</sup> 2011	A group of Human Rights organizations, independent trade unions, student and youth associations, neighborhood committees, citizen assemblies, associations for missing persons, women’s rights’ defenders, cultural personalities, and political parties declared the establishment of the National Coordination Committee for Change and Democracy. They demanded the immediate and unconditional release of all detained demonstrators and opinion detainees, as well as the lift of the state of emergency imposed for the previous nineteen years, which had resulted in a stalemate in the country and the oppression of all liberties.
January 22 <sup>nd</sup> 2011	Algeria decided to lift the state of emergency imposed for 19 years.
April 15 <sup>th</sup> 2011	The Algerian president announced that he was going to request the parliament to initiate political reforms that guarantee the revision of electoral law to consolidate democratic practice. In addition, he announced that he would work towards amending the constitution “to reinforce the parliamentary democracy”.
May 15 <sup>th</sup> 2011	The “National Consultative Commission on Political Reform” was formed of three men and tasked with finishing its work on June 21 <sup>st</sup> , 2011. It was to focus on organizing consultation and agreement with all the actors in the political life and civil society. Some opposition parties and political personalities refused to enter in a dialogue with this Commission.
January 12 <sup>th</sup> 2012	The President issued membership laws pertaining to political parties, electoral system, associations, as well as a law on media and a law determining how women’s representation opportunities would be expanded in the elected councils.
April 7 <sup>th</sup> 2013	The President issued his decision to form a five-member committee for the constitution’s amendment, including only one woman. The Committee presented a Constitution Amendment Draft in September 2013.
January 28 <sup>th</sup> 2016	The Algerian Constitutional Council maintained that the proposed constitutional amendments “do not affect at all the general principles governing the Algerian society, human and citizens’ rights and liberties, or the basic balances between the constitutional authorities and institutions”. It also aligned with Article 176 of the current constitution that permits amendments without a public referendum.
February 7 <sup>th</sup> 2016	The Algerian parliament approved the constitutional amendment draft.
March 6 <sup>th</sup> 2016	The Algerian President issued the law 16 – 01 containing the constitutional amendment.
February 12 <sup>th</sup> 2017	In accordance with the constitution, the President of the Republic issued the Presidential decree number 17-76 creating the National Human Rights Council formed of 38 members, of which 17 are women.
May 4 <sup>th</sup> 2017	The first parliamentary elections under the new constitutional amendment were held. Women won 120 seats out of 462, which equals a representative percentage of 26%, compared to 146 women in the former parliament resulting from the 2012 elections, where the percentage was close to 32%.

## EGYPT

Date	Timeline of events
June 6 <sup>th</sup> 2010	A young man, Khaled Said, was killed by the police, in full view of the passers-by. A few days after the incident, a Facebook page entitled “We all are Khaled Said” was created. Thousands of people joined it and it became a platform for invitations to silent rallies to protest against the violent security services.
January 25 <sup>th</sup> 2011	Egyptian activists called for demonstrations through the social media on this day that coincided with the official celebrations for “Police day”. It was considered as “the day of anger” for the Egyptian people. Thousands of protestors showed up and peaceful demonstrations spread in the different regions of Egypt to demand the fall of the government.
January 29 <sup>th</sup> 2011	President Mubarak addressed the people and said that he was aware of their aspirations. He announced the dismissal of the Prime Minister and the appointment of Ahmed Shafiq instead, with Omar Suleiman as vice-President. But he refused to step down and demonstrations continued against him.
February 1 <sup>st</sup> 2011	In his second address to the people, President Mubarak refused his immediate departure from power, and emphasized that the people had to choose between “chaos” and “stability”. He added that he had tasked the government to respond to the youths’ demands. He also said that he tasked the vice-president with starting a national dialogue and that he did not have the intention to run for a new presidential mandate.
February 11 <sup>th</sup> 2011	A statement was issued by the office of the President in which the latter announced his resignation and handed over the management of the country to the Supreme Council of Armed Forces.
November 28 <sup>th</sup> 2011	The first election of the Egyptian People’s Council after the revolution of January 25 <sup>th</sup> was conducted over three phases, from November 28 <sup>th</sup> , 2011 until January 11 <sup>th</sup> , 2012. The election of the People’s Council and the Shura Council was extremely important because both councils were entrusted with selecting the 100 members of the Egyptian Constituent Assembly that was in charge of drafting the new Egyptian constitution. The Islamic parties won the majority of seats.
March 24 <sup>th</sup> 2012	The first Constituent Assembly for drafting the Constitution was elected. However, it was quickly dissolved by a judgment from the Supreme Administrative Court. On June 13 <sup>th</sup> , 2012, the second Constituent Assembly was elected in the context of severe divisions between the political forces. An Islamic majority again controlled the second Assembly that included 7 women only out of the 100 members.
June 24 <sup>th</sup> 2012	The Egyptian Presidential Electoral Committee declared Mohamed Mursi, political arm of the Muslim Brotherhood from the Freedom and Justice party, the winner of the second round of elections with 51.7% of the votes. On June 30 <sup>th</sup> , 2012 he took the oath of office and became Egypt’s President.
December 15 <sup>th</sup> , 22 <sup>nd</sup> 2012	Referendum on the new Constitution with 64% of approvals and 36% of rejections.
June 30 <sup>th</sup> 2013	On the first anniversary of Mohammed Mursi’s elections, around 14 million Egyptians took to the streets to protest against the “rule of the Murshid (supreme guide of the Muslim Brotherhood)” and demand early presidential elections. On the following day, the Egyptian armed forces issued an ultimatum of 48 hours to meet the people’s demands or else it would intervene and supervise a road map for an exit from the crisis.
July 3 <sup>rd</sup> 2013	The armed forces deposed Mohammed Mursi, suspended the Constitution and declared a road map for an exit from the crisis, including the assignment of Adly Mansour, head of the Supreme Constitutional Court in Egypt, as an interim head of state.
September 1 <sup>st</sup> 2013	The 50-member Committee was formed in accordance with a decree issued by the interim president Adly Mansour, in order to prepare a draft of the Egyptian Amended Constitution. The Committee held its meetings inside the Shura Council. The first meeting was on September 8 <sup>th</sup> , 2013. 60 days later the Constitution draft was ready.
January 14 <sup>th</sup> 2014	The new constitution was approved in a referendum on January 14 <sup>th</sup> , 2014, with the participation of 39% of eligible citizens. It was approved with 98% of the votes.

## IRAQ

Date	Timeline of events
March 20 <sup>th</sup> 2003	The American attack against Iraq started 90 minutes after the ultimatum given by the American President George W. Bush to the Iraqi President Saddam Hussein and both his sons to leave Iraq.
April 9 <sup>th</sup> 2003	The American forces declared their control over the capital, Bagdad, and most of the Iraqi regions. During this period, the American military commander Tommy Franks led the country as the Commander of the U.S. Central Command in Iraq.
April 21 <sup>st</sup> 2003	The multinational force created the Coalition Provisional Authority (CPA), based in the green zone. The CPA was a transitional government of Iraq that vested itself with executive, legislative and judicial authority all along the period of its governance. The CPA was headed by Jay Garner, a former U.S. Army officer, until May 11 <sup>th</sup> , 2003, when President Bush appointed Paul Bremer to replace him.
July 2003	The Iraqi Governing Council was formed. It gathered 25 members, based on a sectarian division that reflected the Iraqi diversity from the American Administration's viewpoint. There were only 3 women in this Council.
November 15 <sup>th</sup> 2003	A timetable for the political process in the transitional period was announced. It stated that the Iraqi Governing Council would draft an interim constitution no later than March 2004 (it was called the Law of Administration for the Transitional Period), to be effective upon the formation of an Iraqi government in June 2004. This government would supervise the elections of a Transitional National Assembly no later than January 31 <sup>st</sup> , 2005. This Assembly would be entrusted with drafting a permanent constitution. Then the National Assembly would finalize the permanent constitution no later than August 15 <sup>th</sup> , 2005, so that the referendum on the constitution would be held no later than October 15 <sup>th</sup> and the government formed no later than December 15 <sup>th</sup> .
March 8 <sup>th</sup> 2004	The Law of Administration for the Transitional Period that set the political and legislative process was issued. In June 2004, the Interim Iraqi Government was formed to replace the Iraqi Governing Council and declare the end of the CPA and beginning of handing power over to the Iraqis.
January 31 <sup>st</sup> 2005	The elections of the Transitional National Assembly, or the interim parliament, tasked with drafting the constitution, were held in the midst of a boycott by the majority of the Sunnis. Women won 30% of the seats as a result of the text stipulating that no less than 25% of the seats should be occupied by women, in accordance with the Law of Administration for the Transitional Period. Then the Transitional National Assembly formed a Constitution Drafting Committee with 55 members, out of whom only 9 were women.
October 15 <sup>th</sup> 2005	The constitution was approved in a referendum, and entered into force in 2006.

## JORDAN

Date	Timeline of events
January 2 <sup>nd</sup> 2011	In order to preempt the expansion of the popular protests, the government reduced oil prices by 5%, and sugar and rice prices by 10%. It also reduced taxes and set a maximum limit for the allowed increase in food prices.
January 14 <sup>th</sup> 2011	Protests and marches started after Friday's prayer in major cities, including the capital Amman, the cities of Irbid, Al-Karak, Al-Sult and Dhiban, and Al-Baqa camp, in what was called the Jordanian "Day of anger". The demonstrations continued in the following days.
February 1 <sup>st</sup> 2011	The Jordanian King Abdullah II issued a decree dismissing Samir Rifai's government which had ruled the country since December 2009.
February 16 <sup>th</sup> 2011	The Jordanian Campaign for Change known as "Jayeen" (we are coming) called upon citizens to participate in the symbolic sit-in in front of Raghdan Palace under one title "the 1952 constitution". It demanded the abrogation of all unconstitutional amendments that weakened the constitution and transformed the Constitutional Kingdom into an absolute monarchy.
February 25 <sup>th</sup> 2011	Tens of thousands protested in the different Jordanian cities including Amman, Al-Karak, Ma'an and Irbid, demanding reform and the implementation of Constitutional Monarchy. The main slogans chanted by demonstrators were: "The people want to reform the regime", "The people want the end of corruption" and "The people want to dissolve the parliament".
March 2011	With the direction of the King, the government established the National Dialogue Committee chaired by Taher El Masri, President of the Senate, and made of 50 members from the different currents. The Committee was tasked with elaborating new laws for elections and parties.
March 24 <sup>th</sup> 2011	Thousands of young Jordanians responded to the Facebook invitation of the "young people from the 24 <sup>th</sup> of March movement" to a sit-in in Gamal Abdel Nasser's square, "Ad-dakhiliyya roundabout" in the center of the capital Amman. Thousands of people participated in the first open sit-in in the Kingdom, in order to demand that King Abdullah II implement a series of reforms. The youth declared that they would not disperse until the reforms were implemented.
March 25 <sup>th</sup> 2011	The security and pro-government forces brutally broke the sit-in of the 24 <sup>th</sup> of March Movement, which caused the death of two and the arrest of a number of protestors. Subsequently, 16 members from the National Dialogue Committee resigned to object. However, 15 of those who resigned retracted after the King promised to approve the constitutional amendments proposed by the Committee.
April 27 <sup>th</sup> 2011	The Royal Hashemite Court declared in a statement that King Abdullah II formed a Royal Committee, all male, tasked with reviewing the constitutional texts and looking at constitutional amendments suitable for Jordan's present and future.
June 2011	The National Dialogue Committee finalized a document and submitted it to the government. It included proposals for constitutional amendments, a proposal for the establishment of a Supreme Constitutional Court, a proposal for a mixed electoral system and a law to regulate the establishment of parties. This document was severely criticized by different political entities since it did not meet the ambitions of the political elite.
September 29 <sup>th</sup> 2011	The King issued a decree approving the amendment of the Jordanian constitution based on what the parliament and Senate had approved. This amendment included the introduction of 15 new articles, the amendment of 45 articles and the abrogation of others. It is worth noting that the overall amendments were focused on immunizing the parliament against dissolution and reinforcing its prerogatives, creating an independent election commission, and establishing a Supreme Constitutional Court, while preserving the King's extended prerogatives with no constraints except those related to parliament dissolution.
August 28 <sup>th</sup> 2014	The Constitution was amended again and the armed forces and intelligence services came under the control of the King rather than the government. Laws regulating elections were also issued.

## LEBANON

Date	Timeline of events
May 23 <sup>rd</sup> 1926	The French Mandate Authority issued the Lebanese constitution, still currently in force. It contains the constitutional principles that prevailed in France at the time, and which were included in the French constitutional laws issued in July 1875 under the Third Republic.
1943	The National Pact was concluded. This unwritten pact was an agreement between the First post-independence President of the Republic Sheikh Beshara El-Khoury, and the first post-independence Prime Minister Riyad El-Solh. Although it is a form of customary law, the National Pact nevertheless constrains the constitution and determines its path. Its most important provisions stipulate that the President of the Republic shall be a Christian Maronite, the Prime Minister a Muslim Sunni, and the Speaker of the House a Shiite. Despite the fact that this pact is a customary agreement, it remains the cornerstone in preserving the relationships between the different religious confessions in Lebanon. Moreover, it was often referred to in order to calm the crises that Lebanon witnessed over the years.
1975-1990	The Lebanese Civil War broke out and had wide regional and international repercussions.
September 30 <sup>th</sup> 1989	The Lebanese MPs met in Al-Taif city with the mediation of the Kingdom of Saudi Arabia, in order to reach an agreement that would end the Civil War. 65 out of the 73 MPs attended these meetings. It is worth noting that this process did not include any woman.
October 24 <sup>th</sup> 1989	The Lebanese MPs gathered in the Saudi city of Al-Taif approved the document of accord in order to solve chronic problems pertaining to Lebanon's identity: the issue of the Arab identity of Lebanon, and the issue of political sectarianism. The accord resolved these issues and included them in the introduction to the constitution. The Taif agreement amended 31 articles all at once and stipulated the establishment of a constitutional council to observe the constitutionality of the laws and to settle electoral disputes and contests.
November 5 <sup>th</sup> 1989	The Lebanese parliament ratified the constitutional amendment based on the Taif agreement.

## LIBYA

Date	Timeline of events
February 15 <sup>th</sup> 2011	The events started with a demonstration organized in Benghazi by the parents of the Bou Salim prison martyrs, during which the lawyer appointed by these families, Fathi Terbil, was arrested. Thousands of people rallied before the Directorate of Security in Benghazi. The demonstration escalated into violent clashes and 38 people were injured.
February 18 <sup>th</sup> 2011	The confrontations reached new cities in the country and some Libyan officials resigned to object against the repression of peaceful protests.
February 26 <sup>th</sup> 2011	The UN Security Council imposed sanctions on Libya, and referred it to the International Criminal Court (ICC) for an inquiry on crimes against humanity.
March 2011	Declaration of the establishment of the National Transitional Council (NTC) in Benghazi and the selection of the former Minister of Justice Mustafa Abdul Jalil to be the head of the NTC that featured only 3 women out of 30 members.
March 17 <sup>th</sup> 2011	UN Security Council voted in favor of the resolution 1973 that stipulated a no-fly zone over Libya and necessary measures to be taken in order to protect the civilians.
March 19 <sup>th</sup> 2011	The French, British and American forces started their first military operations in Libya.
August 3 <sup>rd</sup> 2011	The NTC developed an interim constitutional declaration including the important milestones in the transitional process and regulating the authorities that would run Libya until the constitution is promulgated.
October 20 <sup>th</sup> 2011	Both the Libyan President Muammar Gaddafi and his son Al Mutassim were killed in the city of Sirte.
October 23 <sup>rd</sup> 2011	The NTC declared from Benghazi the liberation of all Libyan territories from the grip of Gaddafi's regime. The head of the NTC announced in the "liberation speech" that "the Islamic Sharia was the main source of laws", and that all laws in contradiction with the Islamic Sharia would be abrogated, including the one limiting polygamy.
March 13 <sup>th</sup> 2012	The first amendment to the constitutional declaration bound the General National Conference to choose people from outside its membership for the Constituent assembly in order to draft a constitution. The assembly consisted of 60 members and was tasked with drafting the constitution within 120 days after its first meeting.
July 5 <sup>th</sup> 2012	The interim constitutional declaration was amended to state that the members of the constitution drafting committee would be elected through direct general elections, taking into consideration the cultural components of Libya.
July 7 <sup>th</sup> 2012	The General National Conference elections were held; women won 37 out of 200 seats.
February 26 <sup>th</sup> 2013	The General National Conference approved the law establishing the High National Election Commission (HNEC), including only one woman out of 11 members.
February 20 <sup>th</sup> 2014	The members of the Committee of 60 were elected in 2014; six seats were allocated to women.
April 21 <sup>st</sup> 2014	The Constitution Drafting Committee started its action and established its headquarters in Al-Bayda'
October 14 <sup>th</sup> 2015	The National Libyan Conference approved law number 14 of 2015 that abrogated women's testimony in the marriage contract.
April 19 <sup>th</sup> 2016	The Constitution Drafting Constituent Assembly approved the draft constitution as a draft for the permanent Libyan constitution in its sixty-eighth session. But this approval was challenged by the members who didn't take part in the vote because the two third majority requested by the interim constitutional declaration was not reached.
July 31 <sup>st</sup> 2017	The Constitution Drafting Constituent Assembly approved the draft constitution with 42 members out of 60 in Baydha which constituted more than the two third majority requested by the interim constitutional declaration

## MOROCCO

Date	Timeline of events
February 17 <sup>th</sup> 2011	Twenty Moroccan human rights groups decided to support the protest movements that young activists had called for through Facebook on February 20 <sup>th</sup> . On the same day, members of Moroccan 20 <sup>th</sup> of February Movement held a press conference where they said they faced many threats and security pressure, as well as arrests.
February 20 <sup>th</sup> 2011	As a response to the invitation initiated by the 20 <sup>th</sup> of February Movement over Facebook, tens of thousands of citizens participated in the demonstrations and marches that spread in many Moroccan cities, in order to demand the following: the endorsement of a democratic constitution, the dissolution of the government and parliament and formation of an interim government, the endorsement of an independent judiciary, the prosecution of the corrupt, and the end of unemployment, especially for holders of Higher Education degrees. They also demanded the recognition of the Amazigh language as an official language and the release of all political detainees.
March-April 2011	There were more demonstrations upon the invitation of the 20 <sup>th</sup> of February Movement on successive dates, notably those of March 20 <sup>th</sup> , April 3 <sup>rd</sup> , and April 24 <sup>th</sup> , in addition to dispersed demonstrations all through the following weeks.
March 3 <sup>rd</sup> 2011	The King formed the Human Rights National Council, a new entity for the defense of human rights instead of the Human Rights Consultative Council created in 1990, whose role was consultative.
March 9 <sup>th</sup> 2011	King Mohammed VI declared in his first speech the creation of a committee for the amendment of the constitution, as a response to the protests' principal demands. The Royal Committee included 19 members, out of whom 5 were women. The King said in his speech that the future constitution would be underpinned by seven key elements: consolidating the separation of powers; safeguarding the constants pertaining to the Islamic religion and the Command of the faithful (Imarat Al-Mu'minin); acknowledging of the Amazigh identity; consecrating the pluralistic character of a unified Moroccan identity; widening the scope of individual and collective liberties and guaranteeing their practice; as well as reinforcing the Human Rights system.
March 10 <sup>th</sup> 2011	The King tasked his advisor with conducting consultations with the heads of parties and trade unions about the proposals for constitutional amendments. But the 20 <sup>th</sup> of February Movement rejected this initiative and considered it a ploy to avoid the substantive demands for change and an attempt to absorb the increasing popular anger.
June 17 <sup>th</sup> 2011	The King declared in a speech that the constitutional amendment project was "a new historical contract between the throne and the people". He encouraged the people to vote for and support the proposed amendments.
July 2011	The draft constitutional amendment was put forward in a referendum, in the midst of a boycott by the opposition forces and the 20 <sup>th</sup> of February Movement. According to the official figures, the percentage of participation was 73%, out of which 98.49% approved the draft constitutional amendment.
July 30 <sup>th</sup> 2011	The constitution was published in the official gazette and became effective on the following day.
October 7 <sup>th</sup> 2011	The first parliamentary election based on the new constitution was held. 65 women were elected out of 395 members.
October 7 <sup>th</sup> 2016	The second parliamentary election based on the new constitution was held. 81 women were elected out of 395 members.

## SYRIA

Date	Timeline of events
March 15 <sup>th</sup> -17 <sup>th</sup> 2011	A limited number of rallies took place in old Damascus and in front of the Ministry of Interior, to ask for lifting the state of emergency and releasing political detainees. Some protestors were arrested and accused of undermining the prestige of the state.
March 18 <sup>th</sup> 2011	Protests erupted in Daraa in the South, because of the way the security forces treated children arrested for writing slogans against the regime. The security forces fired at these protest rallies killing two civilians. This led to the exacerbation of both the magnitude and scope of the popular protests that gradually extended to the majority of the Syrian cities.
March 24 <sup>th</sup> -25 <sup>th</sup> 2011	Activists called for the organization of the "Friday of dignity" all over the country. Meanwhile, the National Leadership of the ruling Baath Party took a few decisions in response to the popular demands, such as increasing civil servants' salaries and setting new and efficient mechanisms to fight corruption.
March 30 <sup>th</sup> 2011	In his first public address before the parliament since the start of the protests in Syria, the Syrian President Bashar Al-Assad did not make concessions to his opponents regarding political reforms in the country. He said there was a big conspiracy targeting Syria, but at the same time confirmed his determination to carry out important state reforms.
April 1 <sup>st</sup> 2011	Following the President's speech, which was described as disappointing by the opposition, demonstrations swept many Syrian cities after Friday's prayers. Tens of victims were killed and hundreds arrested, while the government continued its stringent security measures.
April 21 <sup>st</sup> 2011	The Syrian President issued many decrees to end the state of emergency, to abolish the Supreme State Security Court, and to regulate the citizens' right to peaceful protest.
July 2011	The peaceful popular protests became "militarized" when dissident officers from the Syrian army declared the creation of the Free Syrian Army. The Syrian government accused Turkey, Qatar, and the KSA of supporting and funding this army.
October 2011	The National Syrian Council was established and it quickly expanded in 2012 under the name of the Syrian Coalition for Syrian Revolutionary and Opposition Forces in order to reflect a wider representation of the Syrian opposition.
October 4 <sup>th</sup> 2011	Russia and China used their veto right to obstruct a draft resolution in the Security Council that condemned the Syrian government and asked it to respect human rights and start political reforms. This occurred several times.
October 15 <sup>th</sup> 2011	The Syrian President promulgated decision no.33 stipulating the establishment of the National Committee in charge of drafting a constitution that should be completed within four months. The decision included 29 names, out of which only 3 were women.
November 16 <sup>th</sup> 2011	After many Arab states withdrew their ambassadors from Damascus, the League of Arab States suspended Syria's membership and imposed economic sanctions on Syria.
February 30 <sup>th</sup> 2011	The Geneva Conference was held in an attempt to solve the Syrian crisis with the participation of the five big states of the Security Council, in addition to a group of concerned countries on the regional and international level.
February 26 <sup>th</sup> 2012	The referendum on the constitution took place. The Minister of Interior declared that 57.4% had participated in the referendum, of which 89.4% approved the constitution. The opposition boycotted this process. On the following day, the constitution entered into force by virtue of the decree no. 94 of 2012.

## TUNISIA

Date	Timeline of events
December 17 <sup>th</sup> 2010	Mohamad Bouazizi, from Sidi Bouzid in Midwest Tunisia, set himself on fire after the municipal police had confiscated his only source of income – the cart which he used to sell fruits and vegetables. He passed away on 5/2/2011 as a result of his injuries. This incident triggered popular protests in many Tunisian cities. It constituted a source of inspiration and motivation for many peoples in the Arab region.
December 28 <sup>th</sup> 2010	In his first tv-broadcasted official response to the popular protests, the Tunisian President Zine El Abidine Ben Ali condemned the “riots”, saying they tarnished Tunisia’s image. He then pledged to “strictly” implement the law against mercenaries and extremists.
January 9 <sup>th</sup> 2011	The popular protests reached the big cities and the capital Tunis. They were supported by the most important Civil Society Organizations, the Tunisian Labor Union and the Bar Association.
January 14 <sup>th</sup> 2011	President Ben Ali fled the country on his plane towards the KSA after a mass protest in Habib Bourguiba Street. The Prime Minister Mohammed Ghannouchi proclaimed himself as interim President of the Republic, since the President was unable to fulfill his duties.
January 15 <sup>th</sup> 2011	The President of the Parliament Mohammed Fouad Mebazaa became the interim President of the Republic, after the Constitutional Council declared the President’s post vacant. There was no clear provision about the Prime Minister taking over in such a situation.
March 23 <sup>rd</sup> 2011	Decree no.14 of 2011 was promulgated for the provisional organization of public authorities in the Tunisian Republic.
March 15 <sup>th</sup> 2011	The Higher Authority for Realization of the Objectives of the Revolution, Political Reform, and Democratic Transition was established. It was a semi-legislative revolutionary entity created after the merger between the Committee for the Protection of the Revolution (a group enjoying a revolutionary legality) and the Higher Political Reform Commission (one of three committees appointed by the Tunisian Government), aiming at supervising the democratic transition process in Tunisia as well as the political and constitutional reforms.
October 3 <sup>rd</sup> 2011	Election of the National Constituent Assembly that would be tasked with drafting the constitution. It included 58 women out of 217 members, with a percentage of 29%.
December 12 <sup>th</sup> 2011	The National Constituent Assembly elected the former opposition leader Dr. Moncef Marzouki as interim President of Tunisia.
August 13 <sup>th</sup> 2012	Popular demonstrations spread in many Tunisian cities to protest against the publication of the draft article 28. The latter completely disregarded the principle of gender equality, replacing it with an ambiguous concept of partnership. This raised fears towards what was seen as not only an act of infringement upon women’s gains, but an inclination towards the confiscation of the whole country and the transformation of its cultural and political tendencies. These demonstrations successfully led to amending the draft.
February 6 <sup>th</sup> 2013	Assassination of Chokry Belaid leader of the Opposition national democrats party represented in the constituent assembly.
July 25 <sup>th</sup> 2013	The assassination of Mohammed Brahmi, member of the National Constituent Assembly, triggered a crisis that almost destroyed all the constituent process, had it not been for the intervention of four important CSOs in an attempt for reconciliation between the parties. They actually received a Nobel Peace Prize on the 23 <sup>rd</sup> of October 2015 for this difficult mission. In effect, it was a prize for all the Tunisian Civil Society, for the role it played in the transitional process.
January 6 <sup>th</sup> 2014	The Tunisian National Constituent Assembly ratified the Tunisian draft constitution after two and a half years of continuous work with the approval of 200 MPs, the objection of 12 and reservation by 4.
October 6 <sup>th</sup> 2014	First legislative elections based on the new constitution. 75 women were elected out of 217 members (34,5% )
October 3 <sup>rd</sup> 2016	Election of the members of the high council of justice. 18 women were elected out of 32 members
July 26 <sup>th</sup> 2017	The parliament adopted the Law about violence against women.

*The Comparative Study on Constitutional Processes in the Arab World: Gender Perspective* is the first of its kind.

Through documentation and analyses the study favors the sharing of experiences and best practices and sheds light on the crucial role of gender sensitive approach in constitution-making. The countries that are addressed are Syria, Tunisia, Egypt, Lebanon, Jordan, Iraq, Morocco, Algeria and Libya.

This research is co-authored by constitutional experts Ibrahim Draji, Hoda Elsadda and Salsabil Klibi. It illustrates the principle highlighted in the handbook *ABC for a Gender Sensitive Constitution* [2016]: the process of constitution-making must be based on a holistic, gender sensitive approach and not limited to the inclusion of a few gender equality provisions. This means engendering the language of the constitution and other legal texts, explicitly protecting women's rights, and ensuring women's equal participation in the public and political spheres, as necessary components of a genuine democratic system.